# VALENTYN'S DESCRIPTION OF MALACCA.

[The following paper is a translation by Mr. Müller, Government Translator, of Valentyn's Account of Malacca.

A portion of this has already appeared in Logan's Journal, Vol. IV, but as it appears that it was never completed, and matter was omitted which some might find interesting, and, further, that the translation was not altogether to be depended on, I have thought it worth while to insert a trustworthy translation of the whole with a few notes.

D. F. A. H.]

## ABSTRACT, TRANSLATED FROM FRANCOIS VALENTYN'S HISTORY OF MALACCA (ANNO 1726.)

The town of Malakka is situated in 2° 20′ northern latitude and on 102° 20′ longitude, on the Continental Malay coast, which lies easterly of the East coast of the great island of Sumatra, about 8 miles [leagues ?] in a straight line from the opposite shore.

Ptolemy and the Ancients gave it the name of "Terra or Regio Aurifera," which means "the country rich in gold," or of "Aurea Chersonesus," *i.e.*, "The Gold Peninsula," making it appear at about the 11th degree, where it is joined by a narrow isthmus to Tenasserim and Siam. It is the most southern territory of India.

It is situated on the point of a neck of land, between which and the N.E. coast of Sumatra is a fine sound, known by the name of the Straits of Malakka, or otherwise, by that of the Straits of Singapore, after a very ancient town commonly called *Singapura*.

It covers approximately an area of 1,800 paces in circuit, or of about one mile, and has a strong wall on the sea side of about 600 paces long, being also protected by a solid stone wall on the N.W. or river side. There is, moreover, a stone bastion on the N.E. side, called *Santo Domingos*, and there was another wall, called *Tipah*, built towards the waterside, and extending to a strong round bastion called *St. Jago*, now gone to ruins; there were also other fortresses on the S.E. side and two bastions, making it altogether a

very strong place, but in time almost all these fortifications have gone to ruins. We do not mention their names now, as they will appear in the course of this description.

The convent of the Jesuits, also called St. Paul's Convent, was built higher up in town, and the monastery of the Minorites, otherwise called that of Madre de Deos, stood on the adjacent hills.

The territory belonging to Malakka extends over a length of 30 miles, and over a breadth of about 10 miles. There are two islets in its vicinity, *Ilha das Naos*, (1) within a gun-shot from the town, and *Ilha das Pedras*, (2) from where they got the stones to build houses, &c. with, beyond the range of gun-shot. The Portuguese carracks and galleons used to anchor between these two islets in 4 or 5 fathoms of water. (3)

On the North-West side of the town is a wall with a gate and a small fortified turret, and next to it a river, discharging into the sea, with fresh water at low tide, but with salt water at high tide. Its width is 40 paces, and its current is generally pretty strong. It is commonly called "Chrysorant," and there is another river on the East side. (4)

The country on the other side of the river (being on the same level with the land where the town is built) is joined to it by a wooden bridge; but the ground is very swampy on the South-East side, being generally flooded in the rainy monsoon, with the exception of a small piece along the beach, which lies somewhat higher.

There are in the town many fine and broad streets, but unpaved, and also many fine stone houses, the greater part of which are of the time of the Portuguese, and built very solidly after their fashion.

The town is built in the form of a crescent.

There is a respectable fortress of great strength, with solid walls and fortified with bastions, well-provided with guns, able to stand with its garrison a hard blow. (5) There are, in the fortress, several strong stone houses and pretty good streets, all remembering the Portuguese times, and the tower, erected on the hill, seems to be

(1) Pûlau Jâwa.

(2) Pûlau Ûpeh.

(3) Only about two fathoms now.

(4) No traces of this now, except in the large drains near Kampong Jâwa, and Banda Hîlir.

(5) The only remains visible of this now are contained in the curious old gateway (near the residence of Mr. J. E. WESTERHOUT) which bears Portuguese arms, but a Dutch date, viz., 1670; this is probably what is left of the bastion called "Baluarte Santiago" as marked in the old plates of the Fortress.

still pretty strong, though its interior is falling into decay. This fortress, built on the hill in the centre of the town, is about the size of Delfshaven, and has also two gates, and though one of its sides stands on the hill, yet the other side is washed by the sea. It is at present the residence of the Governor, of the other officers employed by the company, and of the garrison, which is pretty strong. Two hundred years ago this place was merely a fishermen's village (1) and now it is a fine town.

In former times the town had a population of 12,000 souls; but there are now not more than 200 or 300 families, some of which are Dutch and some others Portuguese and Malays, the latter living in the most remote corners of the town in common attap huts.

At a small distance from the town are also some fine houses and many well-kept cocoa-nut plantations and gardens with fruit trees, the greater part of which are owned by Malays.

This town is remarkably well situated for trade, and these straits have been frequented, since the times of old, by much shipping, which still continues from Bengal, Coromandel, Surat, Persia, Ceylon, Java, Sumatra, Siam, Tonkin, China, and from many other countries; the gross revenue in the year 1669 (consisting of 10 per cent. import duty and 3 per cent. export duty, and some other small taxes) amounting to 74,958.18 guilders.

There arrived in that same year 116 Javanese vessels, besides the Danish, Portuguese and Moorish vessels.

This place is very convenient for our vessels passing through the Straits of Singapore going from Japan to Bengal, Coromandel, Surat and Persia, and also for vessels bound for Batavia coming from those places.

The place is not very productive in provisions; everything must be imported from other places, with the exception of fish and some kinds of fruits.

The productiveness of this place is very poor, compared to that of the Coast [ of Coromandel ], Bengal, Ceylon, &c.; and the surrounding country bears a barren aspect.

It is also not safe to venture in the jungle, as it abounds in wild beasts.

One of my friends, Mr. VAN NAARSSEN, told me, that it once had happened to him in person to fall in with a tiger accidentally, and he was sure on several other occasions of being in the neighbourhood of one of these animals, for it was only in that case his horse

(1) *i.e.* about 1525, or 14 years after the Portuguese took it, in which case it must have greatly fallen from the state in which they found it.

got unmanageable. There are, moreover, many elephants and other wild beasts. This same gentleman has told me also, that he once saw a tiger which made a leap at a deer that tried to escape him in the water; the deer did escape, and the tiger was dragged down by an alligator.

The East India Company has a Governor at this place, who has supreme authority over all the officers and over all the affairs. He is assisted by a Supercargo (as second in rank), an Attorney-General, (1) a Paymaster, and a staff of officers similar to those mentioned in our account of Amboina, performing almost the same duties and receiving the same pay; there are here, besides, several "Opperhoofden" (Commandants) of other places or factories, which are under the authority of this Governor, and also an especial "Shahbandar" or Collector of the Custom-house duties.

A Council of Police is constituted from among these officers (as also already mentioned under Amboina) forming the Government of this territory; another Council administers the law; and a third one all the ecclesiastical affairs.

The Malays of these countries are commonly called "*órang di bawa angin*," *i. e.*, "the people below the wind" (to leeward), or else "Easterlings," whilst those of the Occident, more especially the Arabs, are called "*órang atas angin*," *i.e.*, "people above the wind" or Occidentals; this is not that there are no other tribes of that name, but that these two nations are the most renowned, the most ingenious and the most civilised of that race.

The Malays are the most cunning, the most ingenious and the politest people of the whole East.

Whether they have been thus called after the country, or whether the country has been called after them, will be shown by and by, when we shall have traced their origin as far back as possible, producing it from their earliest history.

They are of a rather pale hue and much fairer than other natives of India, also much kinder, more polite, neater in their manner of living, and in general so charming, that no other people can be compared to them. Their language, *Bahâsa Malâyu*, *i.e.*, the Malay language (whether called after the people or after the country) was not only spoken on that coast, but was used through the whole of India, and in all the Eastern countries, as a language understood everywhere and by every one, just as French or Latin in Europe, or as the Lingua Franca in Italy or in the Levant, to such an extent even that, knowing that language, one never

(1) Prokureur-Generaal.

will be at a loss, it being used and understood in Persia, nay even beyond that country on that side, and also as far as the Philippines.

And if you don't understand this language, you are considered a very badly educated man in the East, whilst the Malays are accustomed to study it, trying their utmost to enlarge their knowledge of it and to learn also the Arabic; even some among them the Persian language too, and those who are more studious still strive to obtain the knowledge of the Sanskrit, the mother-language of most of the idioms in the East.

The Malay is spoken nowhere so correctly and so purely as here, though there is still a great difference between the Court language and that of the lower class. The language spoken by the courtiers is so swelling, so interlarded with Arabic (to show their erudition in that language), and differs so much from the common pure language (the former being the adulterated language), since every nation, that speaks this common or low Malay, has mixed some words of their own language with it, that it would not be understood by the common people, for which reason it is used only by princes, courtiers and priests, and therefore considered as the language of scholars. It is by nature a very pleasant, sweet, charming, and yet a very powerful language to express yourself in. A lot of works written in that language, already mentioned by us before, and several fine songs, in which they have transmitted many events of past times, show this plainly.

The Malay men are generally dressed in a pair of trousers, with a broad blue, red or green garment, worn as a blouse, and a turban rolled round the head.

They are commonly of a very lively nature, but they always keep open a back door and are not easily to be caught, while they are witty and of great self-conceit.

I do not know another nation in the Indies more cunning than the Malays and the natives of Macassar, for which reason they are not much to be relied upon.

The women's dress is almost the same as that of other Indian women, or like that of the Javanese women, and consists in a long gown, hanging down to their feet and very often also fastened above the bosom under the arms, the upper part of the body being naked. They tie up their hair in a bundle at the back of their head, though some have another hair-dress, almost the same as that of the Creoles. These women too are generally of a more exalted

mind than other women of India, and they excel also in loveliness and wit far above others. (1)

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(1) The following passage is given in LOGAN'S Journal, p. 700, Vol. IV, but does not occur in my edition of VALENTYN, which is dated 1726.

D. F. A. H.

" The other inhabitants are Portuguese, who are well known, or other " Indians, who have been already described as Chinese, Guzerattes, Benga- " lis, Coast-Moors, Achinese and others.

" The commodities produced here are these :—

" Kĕlĕmbak,* Agila-wood and Camphor in the Kingdom of Pahang, Tin, " Gold, Pepper, Pedra de Porco (Query, Bezoar stones?), Elephant (tusks).

" The imported goods consist of:—

" All sorts of cloths, more especially Petas Malayu, or Malay cloths.

| | |
|---|---|
| " Surat cloths | Coast Chintz. |
| " Bengal cloths. | Opium. |
| " Guinea cloths (coarse | Red Woollens. |
| " blue calico.) | Copper. |
| " Salampories.† | Rupees. |
| " Baíta Brotsja.‡ | Reals of eight [Spanish dol- |
| " Bethilis.§ | lars?]. |

" The charges of the garrison and other expenses run very high, some- " times as much as 200,000 guilders (2 *tonnen gouds*), the reason of which " is, that the clear income during the year is often much less than the out- " lay.

" In the year 1664 and during several years, the expenses were much " higher and it was thought proper to reduce the strength of the garrison " and bring the expenses within the sum mentioned, 200,000 guilders. " Subsequently it was deemed proper further to reduce the expenditure by " 40,000 guilders. Orders were given by their Excellencies in 1669 to " reduce the extent of the fortifications and a certain Ensign (*Vaandrig*) " was established there from the 17th of January of the year and entrusted " with the duties of enquirer."

* MARSDEN quotes LOUREIRO against VALENTYN in support of the contention that "kĕ.ĕmbak" and "gaharu" (i.e. agila wood or lignumaloes) come from the same tree, and are merely different qualities arising from difference in age, &c, and he quotes also, "Gahru chumpaka agullochum sparium, R." But "kĕ.ĕmbak" is the heart of the "kamhôja" tree, known also as "poko' bunga kubbur." The heart of the "chĕmpâka" tree, furnishes the "kastûri," while the heart of the "kâras" tree produces all the varieties of "gaharu," which are as follows:—1st quality, very black, "—lampam;" the 2nd "—tandok" or "—sîsik;" the 3rd "—wangkang" or "—buâya;" 4th, which is not marketable, but is used privately, is the refuse of the 3rd and is called "gaharu mĕdang."

† Half wool, half cotton.

‡ Indian cotton cloth. Brotsja,—place where it was made?

§ A fine Indian linen.

Several other factories are under the Governorship of Malakka of which some are in this country and others on the East coast of Sumatra, and the Opperhoofden (Commandants) of those Settlements were sent thither by the Governor of this place and by his Council. These factories are Peirah (Pêrak), Keidah (Kĕdah), Oodjong-Sâlang, (1) and Andragiri. (2)

Peirah, the first named Settlement, situated on this Malay Coast, was subjected to the authority of the Queen of Atsjin (Acheh), and was only kept for the tin trade: the Hon'ble Company had appointed there an Underfactor, to purchase that mineral for ready cash, or to barter it against cloths at fifty Rix dollars the *bahar*, but the nature of that people is very mean and murderous, which it has shown by murdering in 1651 all the people of our factory at that place. Their Honours have often been compelled to order the Governors of this Government (Malakka) to break up quietly that factory and its lodgings, and to try to find an opportunity to avenge this abominable piece of roguery, which was carried out afterwards, and which we will mention with every particular later on.

The second outer-factory is Quedah (Kĕdah), also situated on this Coast almost opposite Atsjin. We had there also an Underfactor and a Settlement to barter tin, gold and elephants for the Hon'ble Company; but this small kingdom, gave us also now and then so much trouble, that we have been obliged to break up this factory too.

We shall meet with the two other factories in our history of Sumatra.

[*Here follows a list of the Governors and principal Officials of the Government of Malacca.*]

LIST OF THE

GOVERNORS OF MALAKKA.

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Johan van Twist, Governor and Extraordinary Member of the Council of India, ... ... 1641—1642

Jeremias van Vliet, Governor and Extraordinary Member of the Council of India in 1645, ... 1642—1645

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(1) Commonly known as "Junk Ceylon."

(2) Indragîri.

Arnold de Vlaming van Ontshoorn, Governor and Extraordinary Member of the Council of India, 1645—1646

Johan Thyssoon Paijart, Governor and Extraordinary Member of the Council of India in 1657, 1646—1662

Johan van Riebeek, Commander and President, 1662—1665

Balthasar Bort, Commander and President, ... 1665—1668

Promoted to Governorship, ... ... 1668—1679
Extraordinary Council of India in 1670 and Ordinary Council of India in 1678.

Jacob Jorissoon Pits, Governor, ... ... 1679—1680

Cornelis van Quaalberg, Governor, ... ... 1680—1684
Extraordinary Council of India in 1682.

Nicolaas Schaghen, Governor and Extraordinary Council of India in 1682, ... ... 1684—1686

Dirk Komans, Director from 5th January till 26th November, ... ... ... ... 1686

Thomas Slicher, Governor and Extraordinary Council of India, ... ... ... ... 1686—1691

Dirk Komans, Director from 18th October, 1691, to 1st October, 1692, ... ... ... 1691—1692

Gelmer Vosburg, Governor, ... . . 1692—1697

Govert van Hoorn, Governor, ... ... 1697—1700

Bernard Phoonsen, Governor and Extraordinary Council of India in 1703, ... ... 1700—1704

Johan Grotenhuys, Director from 18th January to 22nd May, ... ... ... ... 1704

Karel Bolner, Governor, ... ... ... 1704—1707

Pieter Rooselaar, Governor and Extraordinary Council of India in 1707, ... ... .... 1707—1709

Willem Six, Governor, ... ... ... 1709—1711

Willem Moerman, Governor, ... ... 1711—1717

Herman van Suchtelen Governor, ... ... 1717

SUPERCARGOS OR SECUNDAS.

| | |
|---|---|
| Johan Verpoorten, ... ... ... | 1641—1642 |
| N. Snoek, (asserts that he saw here in 1643 a woman 150 years old),* ... ... | 1642—1645 |
| Gerard Bersche, ... ... ... | 1646— (?) |
| Johan Goesens,... ... ... ... | (?) —1656 |
| Gerhara Herberts, } These two have been Super- } ... | 1656—1661 |
| Balthasar Bort, } cargos at the same time, } ... | 1656—1657 |
| Michiel Curre, (instead of Bort, with Herberts), ... | 1657—1658 |
| Gillis Syben, ... ... ... ... | 1661—1664 |
| Joannes Massis,... ... ... ... | 1664—1669 |
| François Sandvoord, ... ... ... | 1668 |
| Henrik Schenkenberg, ... ... ... | 1668—1670 |
| Dirk Komans, (sometimes acting as Director), ... | 1684—1691 |
| Adriaan Lucassoon, ... ... ... | 1691—1692 |
| François van der Beke, ... ... ... | 1692—1693 |
| Pieter de Vos, ... ... ... ... | 1694—1696 |
| Abraham Douglas, ... ... ... | 1696—1700 |
| Philip David van Ucchelen, ... ... | 1700—1702 |
| Gerard Huychelbosch, ... ... ... | 1702—1703 |
| Joannes Grotenhuys, ... ... ... | 1703—1704 |
| Antoni Valkenier, ... ... ... | 1706—1709 |
| Herman van Suchtelen, ... ... ... | 1709—1711 |
| Antoni Heyusius, ... ... ... | 1711—1716 |
| Gerard Voogd, ... ... ... | 1717 |

CAPTAINS (OF THE GARRISON.)

| | |
|---|---|
| Laurens Forcenburg, ... ... ... | 1641—1642 |
| Hans Cruger, Captain-Lieutenant, ... ... | 1643—1663 |
| N. Femmer, ... ... ... ... | 1680 |
| Jacob Palm, Captain-Lieutenant, ... ... | 1708—1709 |
| Christiaan Trekmeyer, Captain-Lieutenant, ... | 1709—1711 |
| Nicolaas Oostenrode, Captain-Lieutenant, ... | 1711 |

* I had credible information the other day of the death of a man at the age of 120 a few years ago: he died in the Mahomedan year 1295; he could read and write, and told his son that he was born in 1175. In the Death Returns for this year, so far, there are 7 deaths registered at the age of 100 years, but I have been unable to obtain satisfactory proof in regard to them.

## SHAHBANDARS.

| | |
|---|---|
| Jan Janssoon van Menie, ... ... ... | 1641—1644 |
| Emanuel du Molin, ... ... ... | 1656—1660 |
| Michel Curre, ... ... ... ... | 1660 |
| François van der Beke, ... ... ... | 1683—1692 |
| Johan van der Leli, ... ... ... | 1708 |
| Dirk Vouk, ... ... ... ... | 1709—1712 |
| N. Tempelaar, ... ... ... ... | 1712 |
| Samuel Cras, ... ... ... ... | 1712—1716 |
| Johan Bernard, ... ... ... | 1717 |

## ATTORNEY-GENERALS (FISCAALS GENERAAL.)

| | |
|---|---|
| Gerard Herberts, ... ... ... | 1641 |
| Balthasar Bort, ... ... ... | 1649 |
| Johan van Zyll, ... ... ... | 1650—1655 |
| Emanuel du Molin, ... ... ... | 1655—1656 |
| Gillis Syben, ... ... ... | 1656 |
| Balthasar Bort, a short time these ... | 1656 |
| Emanuel du Molin, 4 all together, ... ... | 1656 |
| Gillis Sijlen ... ... ... | 1656—1657 |
| Gilles Syben, ... ... ... | 1657—1661 |
| Abraham den Back, ... ... ... | 1661—1669 |
| Jacob Martenssoon Schagen, ... ... | 1669 |
| Jacob van Naarssen, ... ... ... | 1683—1684 |
| Pieter van Helsdingen, ... ... ... | 1684—1685 |

## BARRISTERS (FISCAALS INDEPENDENT.)

| | |
|---|---|
| Arnold Hackius, ... ... ... | 1690 |
| Arnold van Alzem, ... ... ... | 1695—1703 |
| Abraham van Kervel, ... ... ... | 1708—1711 |
| N. van Loon, ... ... ... ... | 1711 |
| Rutger Dekker, ... ... ... | 1712 |
| N. Crommelyn, ... ... ... | 1712— (?) |
| N. Sibersma. ... ... ... ... | (?) —1717 |

TREASURERS.

| | |
|---|---|
| Jacob de Cooter, ... ... ... | 1641—1643 |
| Jan Claessoon Cloek, ... ... ... | 1657 |
| Thomas de Vos, ... ... ... | 1657—1658 |
| Adriaan Lucassoon, ... ... ... | 1658—1661 |
| Jacob Jorissoon Pits, ... ... ... | 1661—1663 |
| Jacob Splinter, ... ... ... | 1663 |
| N. Rex, ... ... ... ... | 1717 |

SECRETARIES.

| | |
|---|---|
| Balthasar Bort, ... ... ... | 1646—1649 |
| Gillis Syben, ... ... ... ... | 1649—1656 |
| Abraham den Back, ... ... ... | 1656—1664 |
| Matthys Sonnemaus, ... ... ... | 1669 |
| Jan Pas, ... ... ... ... | 1680 |
| Samuel Cras, ... ... ... ... | 1709—1717 |
| N. Lispensier (for a short time "ad interim"), ... | 1712 |
| N. Cotgère, ... ... ... ... | 1717 |

WAREHOUSE-KEEPERS. ("Winkeliers.")

| | |
|---|---|
| Jacob May, ... ... ... ... | 1641—1642 |
| Karel Verwyk, ... ... ... ... | 1642 |
| Dirk van Lier, ... ... ... ... | 1656—1658 |
| Johan van Groenewegen, ... ... ... | 1658—1659 |
| Johan Massis, ... ... ... ... | 1659 |
| Nicolaas Muller, ... ... ... | 1662 |
| N. Bokent, ... ... ... ... | 1691 |

COMMANDANTS ("Opperhoofden") AT PEIRAH.

*This Factory re-established in* 1655.

| | |
|---|---|
| Isaak Ryken, ... ... ... ... | 1655—1656 |
| Pieter Buytzen, ... ... ... ... | 1656 |
| Cornelis van Gunst, .. ... ... | 1656 |

*Factory abandoned in* 1656 *and re-established in* 1659.

| | |
|---|---|
| Johan Massis, ... ... ... ... | 1659—1660 |
| Abraham Schats, ... ... ... | 1660 |
| Johan Massis, ... ... ... ... | 1660—1661 |
| Adriaan Lucassoon, ... ... ... | 1661 |

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COMMANDANTS AT LIGOR.

| | |
|---|---|
| Balthasar Bort,... ... ... ... | 1656 |
| Joannes Zacharias, ... ... ... | 1656—1657 |
| Michiel Curre, ... ... ... ... | 1657—1660 |
| Johan Massis, ... ... ... | 1661— (?) |
| Nicolaas Muller, ... ... ... | 1667—1669 |

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TREASURERS AT MALAKKA.

| | |
|---|---|
| Michiel Curre, ... ... ... ... | 1656 |
| Kornelis van Gunst, ... ... ... | 1656 |
| Michiel Curre, ... ... .. ... | 1656 |
| Abraham Schats, ... ... ... | 1656—1658 |
| Cornelis van Gunst, ... ... ... | 1658— (?) |

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STORE-KEEPERS (DISPENSIERS) AT MALAKKA.

| | |
|---|---|
| Lubbert Coorn, ... ... ... | 1657 |
| Jan Claassoon Cloek, ... ... ... | 1657—1663 |
| Bernhard Vink, ... ... . | 1663 |
| Jacob Jorissoon Pits, ... ... ... | 1663— (?) |

OPPERHOOFDEN (Commandants) AT OEDJONG SALANG.

| | | | | |
|---|---|---|---|---|
| Cornelis van Gunst, | ... | ... | ... | 1656—1658 |
| Jacob Jorissoon Pits, | ... | ... | ... | 1658—1660 |

*The factory broken up in* 1660.

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OPPERHOOFDEN (Commandants) AT KEIDAH (Kĕdah).

| | | | | |
|---|---|---|---|---|
| Pieter Buytzen, | ... | ... | ... | 1654—1656 |
| Arend Claassoon Draey (This Factory was quietly broken up in December). | | | | 1656 |
| Jacob Jorisson Pits (sent thither as Tax-collector; but the roadstead remained blockaded till 1660), | | | ... | 1657 |

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[I have found, moreover, in some of the documents in the Archives of Malacca the names of the following Officers, besides those mentioned above:—

| | | | |
|---|---|---|---|
| Jacob Kerkhoven, Underfactor, | ... | | 1660—1662 |
| Henrik van Ekeren, Supercargo in Ligor, | | ... | |
| Jacob van Twist, Lieutenant, | ... | ... | 1656 |
| Sebastiaan Cledits, Ensign, | ... | ... | 1657 |
| Jan van Es, Ensign, | ... | ... | 1662 |
| Bernhard Vink, Ensign, | ... | ... | 1662 |
| Jan Meke, Surgeon-Major, | ... | ... | 1662 |
| Willem Cornelissoon, Surgeon-Major, in the Fortress, | | | 1662 |
| Henrik Pelgrom, Ensign, | ... | ... | 1710 |
| Pieter du Quesne, | ... | ... | 1711] |

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COMMISSIONERS (known for having done something noticeable here.)

| | | | | |
|---|---|---|---|---|
| Justus Schouten, | ... | ... | ... | 1641 |
| Pieter Boreel, | ... | ... | ... | 1642 |
| Johan van Feylingen, | ... | ... | ... | 1646 |
| Balthasar Cojeth, | ... | ... | ... | 1709 |
| Isaac Massis, | ... | ... | ... | |
| N. Elards, | ... | ... | ... | |

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The island of Dinding belonged also to the jurisdiction of Malakka, and its Chiefs were also appointed by the Governors of Malakka.

## PARTICULARS ABOUT MALAKKA.

To know Malakka thoroughly and to be fully instructed of those particulars which have made it renowned, we must trace its origin and foundation, and disinter for posterity, from the darkness of antiquity, all that has been buried by the lapse of years and by oblivion, or most probably by want of opportunity.

If I had not been so fortunate as to secure some very rare books, written in Arabic, which cannot be got now for any money, I would not have been able to inform the world of those particulars about Malakka, which are now here mentioned, and which we are sure that but very few people could make known to mankind, while among thousands (of men) who know the Malay language, there is hardly one able to read it, when it is written in Arabic characters, and still less to understand that bombastic Malay, mixed with so many Arabic and Persian words and sentences.

Those books then are called "*Tadjoo Esslatina*" or "*Makota Segalla Radja*," *i.e.*, "The Crown of the Kings," "*Misa Gomitar*" and "*Kitab Hantoowa*" or "*Hangtooha*," (1) *i.e.*, "The Book Hantoowa," commonly more known among the Malay scholars under the name of "*Soolalet Essalathina*," that is, "The Book of Heraldry or Genealogical Register of the Kings" (viz., Malakka Kings). These three gems (which are now only found in very few libraries), though full of fictions and useless stories, are considered, however, among us as the best historical descriptions written in the Malay language, and which are not only most useful to learn the Malay thoroughly, but in which are also to be found many useful things about the Javanese, Malay and other Kings, not mentioned by another author. The Mohamedan Princes in India and their Priests are almost the unique possessors of those works, and it is the greatest difficulty in the world to get possession of one copy. But I have got them all, as I have mentioned already before, whilst speaking of the Malay language. Though we find in the two first mentioned works and in some other books, particulars clearing up many obscure points, yet the last one mentioned is in this respect the best one, while it gives us all the particulars from the very beginning, even from before the time that it (Malakka) was built, and in quite a decent style (for natives at least).

(1) *Hang Tûah.*—There were nine of these "hangs," champions, of whom an account may be found in LEYDEN'S "Malay Annals." CRAWFURD speaks contemptuously of it as a historical work, which it no doubt deserves; but it is useful for the insight it affords into the national customs and manners.

I really don't know the author of the book *Hangtooha*, but I must admit it to be one of the most decent Malay works I ever have read, of which we will communicate to our readers a summary as briefly as possible.

If we want to trace scrupulously the origin of the Malays, it is worth while to find out first, whether they derive their name from the country (the Malay Coast and the town of Malacca) or whether that country has been called after them.

They lived first on the great island of Sumatra (called in former times *Andelis* (1) and also *Maningcabo*, (2) till it was discovered that this was the name of only one kingdom of this island) and there more especially in the kingdom of Palimbang, situated on the inner west coast, at about 8 degrees latitude, opposite the island of Banca, on the river *Malayoo*, which runs all round the mountain *Mahameroo*, (3) and thence downwards to the river *Tâtang* and so on into the sea.

* Every one hearing the name of the first mentioned river, would feel inclined at once to think, that those who had settled there had been called after the said river "*Orang Malayoo*," *i.e.*, "the Malayoo people, people living on the river Malayoo," others however suppose that that river (also called *Mallajoo* and *Maladjoo*) has received its name from this laborious, industrious, quick and hasty people, while the Malay word for laboriousness and quickness is also *Maladjoo*. But it is my opinion that the Malays got their first name from that river, and that they have given that name afterwards to several coasts and countries where they have settled, though the whole of this country (then nothing but fishermen) has been subdued by the King of Siam, of whom some of these natives have rid themselves a long time afterwards.

After having been settled here for some years, without knowing anything about a King to govern them (an obscure period, about which nothing has been mentioned by one author), but not quite pleased with this place, and not always having been left unmolested,

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(1) More commonly "Indalas" or "Andalas."

(2) Mĕnangkâbau, or Mĕnangkĕrbau, as to the origin of which name various legends exist, *e.g.* fight between tiger and buffalo, latter winning; also fight between gigantic Javanese buffalo and buffalo calf, latter victorious; again when Râja was first instituted at Bukit Guntang Pĕnjaringan a buffalo with golden horns and hoofs issued from a hole in the ground with a herd of followers, but returned to it before his pursuers could catch him and so "mĕnang kĕrbau."

(3) Mahamîru, the Hindu Olympus.

* This and much of what follows has already been criticised by competent critics, so I will not indulge myself here.

they thought it more advisable to elect a King (and such the more while they had greatly increased, whilst still heathens) which first King had the name of Siri Toori Bowana.(1) This Prince has ruled them 48 years, and pretended to be a descendant of Alexander the Great, to whom Demang Laibur Dawang (2) (who then ruled the Malays as a Prince of less fame) resigned his sway, in consideration of his illustrious lineage and while he was a descendant of such a renowned Prince; this happened in about 1160 A.C. (or some years before).

The Malays crossed under this Prince (Siri Toori Bowâna) from the island of Sumatra to the opposite shore, now the Malay Coast, and more especially to its North-East point, known as "*Oedjong Tanah*," that is, "the extremity of the country," and known among geographers as "*Zir baad*" which means in Persian "below wind" (to leeward), hence receiving a long time afterwards also the new name of "the people below wind" (to leeward), or else "Easterlings" (above all the other nations in the East), from this so-called promontory where they had settled again, the same name having been given afterwards also to some of their neighbours or other Easterlings. This country has generally been known since that time by the name of "Tanah Malâyu," *i.e.*, "the Malay territory" or else "the Malay Coast," comprising in a larger sense all the country from that very point or from the 2nd degree till the 11th degree North latitude and till Tenasserim, though, taking it in a more limited sense, only *that* country is understood, which now belongs under the governorship and jurisdiction of Malacca and its environs; they are also considered above all the real and original Malays and they are, therefore, also called "*Orang Malâyu*," *i.e.*, *the Malays*, whilst all the other Malays, either closely or far off, as those of Patani, Pahang, Peirah, Keidah, Djohor, Bintam, (3) Lingga, Gampar, (4) Haru, and others in this same country or on the islands of Bintang(5)

(1) "Sri Tribuâna" and "Sri Trib'huvena"—*Malay Annals*, Leyden. But Crawfurd accepts "Sri Turi Buâna," and on the authority of Professor Wilson gives "Illustrious Tûri tree of the world" as the meaning. His first name was "Sang Sapĕrba."

(2) Lêbar Daun. "Dĕmang" a Chief (Javanese).— "Dĕmang Lêbar Daun"— "Chieftain Broad Leaf."

(3) Batam or Batang Island lying between Bentan and Bulang? or Bentan?

(4) Kampar, river and country of that name in Sumatra lying between the Siak and Indragîri rivers.

(5) Bentan, the island lying E. by S. of Singapore, on which is a prominent hill visible from Singapore, and alongside of which on the W. side of it, lies Pûlau Pènyingat, the site of Rîau (Rhio).

Lingga (1) (on the South of Malakka ), or in Sumatra, are also called Malays, but always with the addition of the name of the country where they come from, as for instance: Malayu-Djohor, Malayu-Patani, &c., &c.

Now, this is that famous far-renowned country considered by many ancients and even by many people now-a-days, to be that very ancient *Ofir*, the country from where King SOLOMON got the gold and the other Indian curiosities, mentioned in the H. Scriptures, and consequently called by the ancients "*Regio Aurifera*," *i e.*, the gold coast, the gold region.

It is certain that, leaving *Ezion Geber* and passing through the *Red Sea* and so along the shores of *Arabia* and *Persia* and from there again along the Coasts of *Malabar*, *Coromandel* and *Bengal*, and so on, skirting along the coast, from one shore to the other and finally along the Kingdoms of *Arracan*, *Pegu*, *Siam* and *Tenasserim*, till the Malay Coast, this could be done without a compass ; but we have amply shown in our first volume and in other places, that it was not this Coast, which was meant by that *Ofir*, but that it must have been very likely the island of Ceylon.

The Malays, after having remained at that place for some time, built there their first town, calling it *Singapura*, and a small sound on the South side of the same town still carries that name.

The King of *Madjapahit* (an empire of Java) was in those days one of the most powerful Princes in those quarters. He was not only feared on the island of Java, but he had conquered also many places in Java Minor and in Sumatra and had extended his dominion over several other provinces. (2)

Madjapahit then being one of the first and most celebrated cities, not only of Java, but of the surrounding islands too, the ambition of its Prince induced him to drive this new people out of their country, and consequently to attach a new pearl to his crown. He attacked them several times with large forces and thus forced them to fortify their place more and more.

SIRI TOERI BOWANA died in 1208, after having ruled them as a brave Prince during 48 years, and was succeeded by PADOEKA

(1) On this island is Däek, the seat of the Johor sovereign after the abandonment of Johor Lâma. The occurrence of the names Bintam Lingga and Bintang Lingga together, would suggest perhaps accidental repetitions, rather than the inference that Bintam was for Batam, the latter not being well known, while Bentan *was* in connection with Lingga. This is evidently the case from what appears on p. 65.

(2) And had had communication with China after defeating a Chinese expedition sent against him.

Pikaram Wira as their second Prince. This one did not govern them for such a long space of time; he died after a period of 15 years. He did nothing of importance, only extending the recently built town and fortifying it a little more, so as to be able to withstand better the plots of the mighty Prince of Madjapahit, who did not leave him in peace.

He died A. D. 1223, and was then succeeded by the third King, Siri Rama Wikaram. This was a young and brave King, who ruled them during 13 years with moderation, and who commenced to be feared all round, but he died very suddenly in 1236, to the great grief of his people, who liked him very much.

His successor was Siri Maha Raja, who was the fourth King and who also made a very good figure and extended the town greatly. He governed them 12½ years with great care, and was also very much liked by his subjects and feared by his enemies. He died in 1249.

That same year Siri Iskander Shah was elevated to the crown in his place as the last King of Singapura. He resisted the mighty King of Madjapahit in the first three years of his reign, but was so hard pressed by him at the end of 1252, that he had to abandon Singapura and to migrate higher up to the North side and from thence to the West side of this country, where he laid foundation of a new town in 1253. Including him, five kings had ruled in Singapura during a period of 91 years. He embellished that new place gradually to such an extent that, among the three great and celebrated cities in those quarters of the East, this place was considered afterwards to be the third in rank, or next to Pasi in Sumatra, which stood second next to Madjapahit. He called this new town Malakka, after a certain tree—"Kajoo Malakka," or the Malakka, otherwise called the *Mirabolan* or the pentagonal tree. While it happened that he commenced to build the town * at the very spot where he had taken some rest under such a tree, whilst waiting there till the dogs dislodged the game, one day that he was hunting in those environs, all which particulars are told at large in the book *Hantoowah*. The former Kings of Madjapahit, not yet satisfied with the conquest of Singapura, crossed to the opposite shore of the island of Sumatra and took there the kingdom of Indragiri. Since then, they have always made one of the Javanese princes, related to them, King of that realm, and we shall find afterwards one of the Kings of

* Mr. Maxwell has drawn attention to the existence of a similar legend amongst the Guzaratis. (Journ. Roy. A. S. Socy, XIII, N.S.)

Malakka as a King on *that* throne, invested with *that* authority by the King of Madjapahit.

In the meantime this town (Malakka) and this renowned people increased under this prince very much in importance and in power, and it was this King who laid the foundation of a permanent kingdom.

He lived till 1274 A. D., and died after having governed this people during 25 years, having swayed the sceptre three years in Singapura and 22 years as the first King of Malakka, feared by his neighbours, and beloved by his subjects. Sultan MAGAT succeeded him that same year as the second Malay King at Malakka.

This prince died after a short reign of two years, and on his death the Malays had been governed 115 years and 6 months by Heathen Kings.

He was succeeded in 1276 by Sultan MOHAMMED SHAH, the seventh King of the Malays, and the third of Malakka, who was the first Mohammedan Prince of Malakka; he became famous, while he strongly propagated this new religion and greatly enlarged his empire during the 57 years that he governed this kingdom.

It seems that it was he who transferred the name of Malajoo to the adjacent islands of Lingga and Bintam or Bintang, South of the Promontory of the Malay Coast, and that he made that name famous among the natives of Djohor, Patani, Keidah (otherwise called Quedah), Peirah and of other places even on the opposite coast of Sumatra and Gampar (1) and Haru, and that the inhabitants of those quarters, feared him so much, that apparently all their countries were then already subjected to him.

Not satisfied with those conquests, he married in the last years of his reign, the Princess of Arracan, heiress of that King, thus subjecting that kingdom by inheritance, installing the Prince, whom he appointed there and who had been selected among the Malays Mangkubumi, *i.e.*, Chancellor of the Kingdom of Malakka.

He died A.D. 1333, after having reached a very advanced age, leaving to his son Sultan ABOO SHAHID (the eighth King of the Malays, the fourth of Malakka, and the second Mohammedan King) a peaceable kingdom. But this Prince did not possess it a very long time, for he was stabbed by the King of Arracan in 1334, after a reign of but one year and five months, leaving the kingdom in the same condition as his father had left it to him.

He was succeeded that same year by Sultan MODAFAR SHAH (as

(1) Kampar, see note (4) page 64.

the ninth King of the Malays, the fifth of Malakka, and the third Mohammedan King). This King governed his people with great sagacity and very carefully.

He shewed his sagacity in leaving to his people a book full of sublime rules and maxims, called "The Statutes of Malakka," and he has given also many proofs of his valour during his reign of 40 years.

A very mighty Prince, called BOOBATNJA governed in 1340 the Kingdom of *Siam* (then called *Sjaharnan* or *Sornan*).

This King who had overpowered the countries all round his empire, having also received reports of the celebrated commercial town of Malakka, was jealous of its rise, challenged it to surrender, and when King MODAFAR would not submit to him, he ordered his General AWI ISJAKAR to attack it.

A fierce battle ensued between these two Princes, or rather between their Generals, but SIRI NARA DIRÂJA, the General of Malakka, behaved so valiantly, that he forced the Siamese to retreat with great loss and shame. That King of Siam died soon afterwards, and was succeeded by one CHUPANDAN, who did not leave the matter, but, again attacking the King of Malakka, besieged the town for the second time; but he was as unfortunate as his predecessor, and was also defeated by the same General of Malakka, who gave him such a severe blow in driving him away from the town, that he too died of chagrin a short time afterwards.

It was at this time that the town of Malakka was considered the third in rank with Madjapahit and Pasi, among the renowned cities in those quarters of the East.

This Prince governed this kingdom with much glory for some years more, and died in 1374.

He left his son as his successor, who was first commonly called Sultan ABDUL, but called afterwards (when he became King) Sultan MANSOR SHAH. He was the tenth King of the Malays, the sixth of Malakka, and the fourth Mohammedan King. Many important things happened in these quarters during his reign, and none of his predecessors governed so long as he did, viz., 73 years.

The Kingdom of Indragiri on the East coast of Sumatra was still under the supremacy of Madjapahit in the beginning of the reign of this King, but when MANSOR SHAH had married RADIN GALA ISJINDRA KIRANA, the daughter of the King of Madjapahit and a Princess of great celebrity, that King bestowed the Kingdom of Indragiri upon his son-in-law, and in this manner Indragiri came under the rule of the Kings of Malakka, who governed it till we came here.

The King of Madjapahit was at that time (1380), so powerful

that he rather ought to have been styled an Emperor than a King, while there were so many Kings submitted to his supremacy, that, when they appeared in his council. he had to show to every one of them their seat according to their rank. He gave the first seat, the place of honour next to him, to the King of Daha; the second seat to the King of Tanjong Pura (Java), who was also married to one of his daughters, NASA KUSAMA or NYAI KASUMA and who has succeeded him as King of Madjapahit; and the third seat was the place of the King of Malakka, his other son-in-law.

King MANSOR SHAH made also an alliance with the Emperor of China, and married his daughter. After this union he declared war with the King of Pahang and conquered his kingdom.

At that time Malakka was the first, Pasi the second, and Haru the third city in those quarters of the East: these places were famous, excelling in power and importance. Afterwards he declared also war with the King of Pasi, one SAINALAHDIN,* and defeated him too.

A short time afterwards, about 1420, KRAIN SAMARLOOKA, King of Macassar, sent a fleet of 200 sail with a strong army to Malakka, to wage war against that place, but the Laksamana or the Admiral of King MANSOR SHAH attacked the enemy so valiantly, that he compelled him to retreat, and he retired to Pasi, which place he then besieged, ruining the country all round it.

The said SAINALAHDIN, King of Pasi, afterwards had differences with his two younger brothers, who drove him from his kingdom, compelling him to take refuge with this King of Malakka (MANSOR SHAH), who took him under his protection, He besieged Pasi for the sake of this Prince, and reconquered for him his kingdom and its chief town; but afterwards he (SAINALAHDIN) would not submit to MANSOR SHAH.

His reign thus passed in constant wars and military troubles.

He died in 1447, leaving his son, Sultan ALEDDIN as his successor.

He was the eleventh King of the Malays, the seventh of Malakka and the fifth Mohammedan King.

His reign lasted 30 years, but it does not appear to me, that he performed anything memorable. It moreover seems to me that, under his rule, Malakka must have submitted for a short time to the dominion of the King of Siam.

He died in 1477 and was then succeeded by Sultan MAHMUD SHAH, who was the twelfth King of the Malays, the eighth and also

* ZEINÊDDÎN, or ZEINALÂBÊDDÎN.

the last King of Malakka, and the sixth Mohammedan King.

He governed this people during 36 years, of which 29 years in Malakka and afterwards 7 years more in Johor. It was under his reign that the Malays threw off the Siamese yoke, and such in 1509; but we will see that at large in what follows.

It was also during the reign of this King, that the Portuguese arrived for the first time at Malakka, and conquered the country. For the sake of evidence and to clear up the matter, we will mention all those great events from the beginning and treat in due order that part of the history of Malakka and of its Kings till the time, when we arrived in these regions.

## ARRIVAL OF THE PORTUGUESE AT MALKKKA.

The Malay historian is not quite correct, when he states that the Portuguese arrived for the first time in these quarters, more especially in Malakka, in the beginning of the 30th year of Sultan MAHMUD SHAH's reign, for, adding 29 years to the date that he ascended the throne, *i.e.*, 1477, the first arrival of the Portuguese should have happened in A.D. 1506, and it is fully evident from what follows, that they first came here not earlier than two or three years after that date and that they did not conquer Malakka earlier than five years after that date, viz., A.D. 1511. This Prince's reign was consequently a longer one in Malakka and not such a long one in Johor.

King EMANUEL of Portugal ordered in 1508 JACOB SEQUEIRA, (1) one of his Admirals (according to MAFFEJUS it was the Admiral DIDAKUS LOPES), to go with 4 vessels of his fleet of 16 sail to Malakka to make a treaty of friendship with the King of that country, then Sultan MAHMUD SHAH.

Arrived at Cochin, he first went in 1509 to Sumatra, touched at Acheen, and finally arrived thence at Malakka.

He met King MAHMUD at that place, who had then just revolted from the King of Siam, under whose dominion the Malays had been for a short time. SEQUEIRA, as soon as he had dropped anchor, forwarded one HERONEMUS TEIXEIRA (1) with a present and with a letter written in Arabic from King EMANUEL, requesting the said King of Malakka to allow him (SEQUEIRA) to carry on trade in amity, which the King granted him at once.

No sooner had SEQUEIRA made a treaty of friendship and of

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(1) This name is still met with here.

commerce, than the Moors and Arabs pointed out to the King that the Portuguese did not come here to trade, but that it was their intention to drive the Prince out of his kingdom. They spoke so in fear that, when the Portuguese were once allowed to trade here, their own traffic by means of caravans from Cairo and Alexandria in Egypt and to Europe, would be totally ruined.

They aspersed the Portuguese character to the utmost, and told the King that they had acted in that very manner at Cochin, Cananoor, Ormus and other places, that they had seized upon the said countries and had built fortresses in all those places to vindicate their rights.

The consequence of these instigations was that MAHMUD at once made up his mind to violate his word and to break the treaty already made with SEQUEIRA, and he intended to invite him with his principal officers to a dinner and to kill them all at that party.

The Moors thought this plot to be carried out as easily as it had been easy to their cunningness to persuade the King to their purposes, but we will see that they did not succeed so readily as they had imagined.

True, SEQUEIRA had already accepted the invitation, but, in the meantime, having been informed of the said plot, he pretended to be unwell and betrayed nothing.

The King had also allowed SEQUEIRA to have a building on shore, in which house RODRIGO ARANGE (1) had already established himself as the Supercargo, for the trade of the Portuguese.

The Chinamen living here and a Persian woman had informed SEQUEIRA in time, by means of a tailor, of the intended treachery, but at first neither he nor his companions would believe that it was true, and they went on courting the girls in the town behaving unchastely.

One Nakhoda BEGUA and one ISUTEE MUTIS, (2) a Javanese Raja (I really don't know how to spell these names), the wealthiest inhabitants of this place next to the King, meantime did their best to kindle this fire and to confirm the King of Malakka more and more in his hatred to the Portuguese. They made splendid presents to the King and to his uncle, thus trying to obtain their villainous object; but the Admiral of the King of Malakka, an honest man, fully disapproved this shameful treason, and maintained that the King was obliged to keep the treaty at least as long as these new customers had not given him a reason to do something

(1) According to the *Commentaries* of ALBUQUERQUE, "Ruy de Araujo."
(2) Utimâti, a Javanese title.

of that kind with some appearance of justice: but all his persuasion, though well-founded, had no effect.

When MAHMUD heard that his first plot had failed and that the principal reason that SEQUEIRA had not come was, that the promised spices had not been forwarded to him, he sent him word that he would despatch at once the crafts with the goods. SEQUEIRA seemed to be pretty well pleased with this message, but he for his part stationed at the same time some of his boats on four different places so as to be prepared for all eventualities.

The King sent some embarkations with soldiers besides, who were hidden under the victuals and provisions. He ordered moreover some of his people to conceal their arms under their garments and to try to get access on board of the vessels as dealers in eatables, and to take hold of the opportunity as soon as they perceived a column of smoke going up in the town.

PETRUS MAFFEJUS tells us, that ISUTEE MUTIS had ordered his cousin, one PATIAKOOS, to kill SEQUEIRA, while SEQUEIRA had put his trust entirely in that man and admitted him freely into his presence.

When everything had been properly arranged, the crafts paddled to the vessels; they created suspicion, however, by ascending the vessels with too large a number at once and GRACIA DE SOUSA noticing this stopped them and sent FERDINAND MAGELLAAN to SEQUEIRA, to warn him that there was something suspicious in the wind.

ISUTI MUTIS and his men, eight of which already surrounded SEQUEIRA, who was playing at chess, stood anxiously waiting for the signal on shore, viz., the column of smoke. SEQUEIRA, though warned by MAGELLAAN, did not care at all about it, he only ordered a Mate to ascend the mast to see if the boats, which had their freight, were on the way back already, and continued his game as passionately as ever. Still the signal was not given, and when the Mate, who was in the mast, saw that a Malay drew his Kris and that another made a sign to show the first one, that it was not the right moment yet, he warned SEQUEIRA at the top of his voice, that those Malays were merely waiting for a signal to effectuate their plot.

SEQUEIRA called out for his arms just in time and drove the enemies overboard, who, astonished and wild that their attempt again had failed, jumped in their boats and hurried away from the vessels.

The signal on shore was given just after they had left the vessels, and the consequence was that those who had still stopped

straggling in the town, were murdered unmercifully. Twenty of them fled to the house of RODRIGO ARANGE (1) and FRANCISCO SERRANO, and having got a boat in time escaped the massacre.

Whilst SEQUEIRA and his officers were still deliberating with each other about this wicked deed, the King and the Bandahara (Chancellor of the Exchequer) sent an Ambassador to the vessels to apologize for what had happened, offering to punish all the culprits and to deliver unhurt all the Portuguese who were still in ARANGE's house. The very first thing that SEQUEIRA did, was to claim, that those Portuguese should be surrendered at once, but seeing that the King was continually using subterfuges and that his ships got gradually surrounded by a great many native crafts, blocking him up imperceptibly, he thought it more advisable not to stop any longer, but to weigh anchor, not only to avoid a flagrant breach of peace, but also not to miss his return to India through the Ganges, by the passing of the monsoon. But when he received the intelligence, that D'ALMEIDA (together with whom he had been dispatched) had returned home, he too went back to Portugal. The famous ALFONSUS ALBUKIRK, who had been appointed Vice-Roy in 1509, had resolved in the meantime to conquer Aden, in compliance with the orders of his Sovereign; he consequently first sailed with 23 vessels, manned with 800 Portuguese and 600 Natives of Malabar to Ormus, intending to take the usual way, but, prevented by contrary winds, he had to put it off an to take another resolution. He then conquered Goa and made peace at Ormus.

JACOB MENDES VASCONSEL, backed by several other ship-masters, wanted then to go to Malakka against the advice of ALBUKIRK and actually started to realize that plan; but ALBUKIRK had him brought back by main force, imprisoned him and dismissed several of his advisers.

He made at the same time a treaty with the King of Pacem (Pasi) and insisted upon the extradition of Nakhoda BEGUA; but this one having escaped before he could be surrendered, the Portuguese at once pursued him and succeeded in overtaking his ship, he was killed after having defended himself very bravely.

The following curious fact occurred at his death, viz., that no blood was to be seen first, though he had been stabbed through; but it was discovered then, that he wore a blood-stanching stone

(1) See note (1) p. 71.

in a bracelet, (1) and as soon as that stone had been removed from his body, the blood gushed from his wounds.

It was about that time that the King of Malakka, who was still a vassal of the King of Siam, threw off that yoke.

He (ALBUKIRK) sailed to Malakka on the 1st August, 1511. The Chinamen of that place were kind enough to warn him of an attempt already planned there beforehand against him and promised at the same to assist him, whilst the King sent him a proposition of peace as soon as he had cast anchor. The King of Pahang (the Portuguese pronounce it Pan) to whom MAHMUD'S daughter had been betrothed a short time before, was also at Malakka, when ALBUKIRK arrived there and it was on the wedding day at the very moment, that some of the allied princes, who had been invited to witness the marriage, were led round, seated on a magnificent triumphal car on 30 wheels, that he dropped anchor.

The sight of the arrival of ALBUKIRK'S fleet disturbed the King and all the wedding guests; the majority of them being natives, they wanted to run away at once, but the King, hearing that he did not want to interfere with their festivities, sent to inquire of him, with what kind of goods he could serve him, upon which he sent the reply that he did not want any new goods, but that he merely came to demand the Portuguese who were still there and those goods which had formerly been detained so deceitfully.

The King, who had certainly about 9,000 brass guns in the town, tried to put him off with promises and to protract till his fleet, which had left for an expedition, should have returned, and therefore told him, that those Portuguese had escaped; but ALBUKIRK, not inclined to be put off with that excuse and receiving not even the slightest news of his companions on shore, ordered at once to set fire to some houses in the town and to some native embarkations, and thus compelled the King to deliver to him immediately ARANGE and the other Portuguese, whilst he assured ALBUKIRK, that he wished most ardently to be at peace with him. But when ARANGE had warned ALBUKIRK not to trust the King, he claimed a place where he could build a fortress, which the King promised him to his choice, putting it off however constantly. Seeing that

(1) In the *Commentaries* of ALBUQUERQUE described as a bracelet of bone set in gold, said to be made "of the bones of certain animals which were called "*cabals* (also *cabais*) that are bred in the mountain ranges of the kingdom of "Siam, and the person who carries these bones so that they touch his flesh can "never lose his blood, however many wounds he may receive, so long as they are "kept on him."

the King tried again to deceive him, he ordered to set fire to his palace. Then the King begged to make peace and accepted the terms made by ALBUKIRK, who demanded the delivery of all the Portuguese, the restitution of the stolen goods, and the indemnification of the expenses for two fleets, which had been despatched this way; but the King's son (whom MAFFEJUS has named ALLODIN) and the King of Pahang declining to accept the said terms, ALBUKIRK ordered his troops to attack and to plunder the town, and to spare only the properties of one NINACHETU and of ISUTINUTIS, (who had already made peace with him before and had submitted to him) and of all the Javanese who stood under his orders and of a few other individuals, who were his allies in town. The King having been wounded personally dismounted his elephant and fled, and so did the King of Pahang too, and they never returned again.

A few days afterwards he and his General ANTONIO D'ABREO (1) attacked the town for a second time; a fierce battle was fought, but D'ABREO conquering a certain bridge put the Malays to flight and ALBUKIRK made his entry in the royal palace where he found that the King and his household had already fled.

ALLODIN having collected the fugitives, was defeated for a second time and compelled to flee to the island of Bintam (situated opposite to Singapore), where he fortified himself in spite of its Prince.

The Portuguese, once masters of the town, plundered it thoroughly, capturing among other things the 9,000 brass guns. The booty seized at Malakka was so rich, that one fifth of it, *i.e.*, the part reserved for the King (of Portugal), amounted to 200,000 ducats.

ALBUKIRK appointed Raja ISUTINUTIS, head of the Moors, and NINACHETU, head of the other native inhabitants; he fortified the town, opened the place for the trade, and built of the tombs of the Kings the first Christian Church, devoted to the Annunciation.

He sent the news of this conquest to the King of Siam, who was very much pleased, that his disloyal vassal had been punished so severely, he congratulated ALBUKIRK on his success and begged him to make an offensive and defensive alliance. The Laxamana (or Admiral of Malakka) came to beg him also to consider him a friend, assuring him, that he had tried to dissuade the King from making war, and ALBUKIRK pardoned him also.

And behold now this proud Malakka, the glory and the success of the Malays!

(1) *Commentaries*—ALBUQUERQUE, "Dabreu."

The fugitive King MAHMUD did not die of grief (1) (as it is asserted by the Portuguese), but he had fled in 1511, to the North-East side of the Southern Promontory of the country, after having ruled Malakka for 34 years; with him a period of 252 years was completed that this country had been under the sway of Malay Kings. He commenced to build a new town at that place (the third one built by Malay Kings in those quarters), enlarged it and finally finished it, and gave it the name of *Johor*, after the Arabic word "Johor" perhaps, which means "a pearl" also "the fine human shape."

He founded a new empire there, the Kings of which from that date were no longer styled Malay Princes or Kings of Malakka, but Kings of Johor. He reigned two years at that place, died in 1513, and was succeeded by his son, who had not the name of ALLODIN (according to the Portuguese historians), but who has been mentioned by the Malays as Sultan AHMED SHAH, in their genealogical register of the Kings of Malakka and Johor. He was the thirteenth King of the Malays, the first of Johor, and the seventh Mohammedan King.

[ *To be continued.* ]

(1) The *Commentaries* say he died at Pahang, a few days after his arrival there.

# THE LAW AND CUSTOMS OF THE MALAYS WITH REFERENCE TO THE TENURE OF LAND.

## Introductory.

THERE are, probably, few subjects connected with the Government of a Malay population which are so little understood by Englishmen in the Colony as the principles which account for the point of view from which these people treat the possession of, and rights in, land. Successive generations of public servants in the Straits Settlements have been haunted by a bug-bear known as "the Malacca Land Question," which still makes periodical appearances, and is very far from having been set finally at rest: it is nearly sixty years old and has derived from the joint forces of ignorance and neglect an extraordinary vitality. From time to time a great deal of well-meant labour has been employed in trying to bring Asiatic customs and English law into harmony without the aid of legislation, and it need hardly be said that the task is an endless one. Two systems of tenure have been in operation in Malacca during the greater part of this century, and the present generation of officials have inherited a legacy of confusion in which time develops fresh combinations continually.

In all the provinces of British India, British Administrators have taken the native revenue system as the ground-work on which to build up a detailed and consistent structure of land-revenue administration. Native tenure has been fully recognised; native law has been studied; the technical terms used in the vernacular to express particular documents, tenures and native officials have been preserved and are employed in all the Courts; nothing so fatal to the prosperity of the country and

so unsuited to the native mind as the introduction of English real-property law has been dreamt of. Why was the policy of Indian Administrators as regards Malacca directly contrary to that pursued in British India? Principally, I think, because it was not soon enough discovered that the conditions of Malacca—an ancient Malay kingdom and then successively a Portuguese and Dutch Colony—differed fundamentally from those of the modern Settlements of Penang and Singapore, which had no population prior to their acquisition by the East India Company, and to which, therefore, any law of land tenure might be applied without the fear of disturbing existing rights, interests, customs, prejudices or superstitions. Malacca has never been the seat of Government during its occupation by the British, and the land laws and regulations formulated from time to time by officials, more conversant with the English practice introduced into Penang and Singapore, than with native law and custom, have never really fulfilled their purpose.

Within the last nine years, certain Malay States on the West Coast of the Peninsula have fallen under the direction of British Officers subordinate to the Government of the Straits Settlements, and the latter are, therefore, to some extent, in a position similar to that of the Malacca officials earlier in the century. Unless future generations of public servants are to be confronted by a Perak, a Salangor, or a Sungei Ujong "Land Question," it is difficult to exaggerate the importance of studying very closely, and understanding very clearly, the nature of native rights in land. There is even a danger of imbibing and conveying erroneous ideas on the subject by the use of English technical terms.

The first proclamation about land issued in Perak under the advice of a British Resident contained such terms as "fee simple," and in Larut, as early as 1876, land was being transferred and mortgaged with all English legal technicalities by the aid of two or three ignorant scribes who brought printed forms from the nearest British Settlement—Penang! It is perhaps doubtful if, to this day, the Malay law of land tenure and Malay thought and feeling regarding land are properly understood by Europeans in Native States, and, if not, there may be reason to fear difficulties in years to come.

Besides persons in the service of the Native Governments, who are brought, by their duties, into connection with native land-holders, there is an independent class of British settlers—planters, miners and others—to whom it may be important to know what rights in contiguous land their native neighbours may have, and how far they are at liberty to alienate them.

It has occurred to me, therefore, that it may be useful to summarise, as far as I have been able to ascertain it, the law relating to immoveable property in an independent Malay State, and to publish translated extracts from Malay Codes of laws, as well as the judgments of English Judges who have had to deal with the subject. I shall be amply repaid for the trouble which I have taken to examine the available information, and to arrange it in an intelligible form, if increased recognition and respect for the rights of native land-holders should be obtained thereby.

## Chapter I.

## PROPRIETARY RIGHT.

The customary law of the Malays with reference to the occupation and proprietorship of land differs little from that of other Indo-Chinese nations—the Burmese, Siamese and others. The natural condition of land in Malay countries, from Sumatra to Borneo, is characterised by dense forest, which demands no small labour and perseverance before a clearing is effected and cultivation commenced. Land is abundant, but the population is sparse; there is no restriction upon the selection and appropriation of forest land, and a proprietary right is created by the clearing of the land *followed by continuous occu-*

*pation.** Forest land and land which, though once cleared, has been abandoned and bears no trace of appropriation (such as fruit-trees still existing) are said technically to be *tanah mati*, or "dead land." He who, by clearing or cultivation, or by building a house, causes that to live which was dead (*meng-hidop-kan bumi*), acquires a proprietary right in the land, which now becomes *tanah hidop* ("live land") in contradistinction to *tanah mati*. His right to the land is absolute *as long as occupation continues, or as long as the land bears signs of appropriation.*

This qualification of the right of the proprietor is the key to several important distinctions which help towards the classification of the subject. Malays practice two kinds of cultivation—either permanent cultivation (wet rice-fields and plantations of fruit-trees) in the plains; or shifting cultivation (dry rice-lands and vegetable gardens) on the hills. In cultivation of the latter kind, the element of continuous occupation, and, therefore, a lasting proprietary right, is wanting. Again, between wet rice-fields and fruit-plantations there is a wide difference in respect to the permanence of evidence of appropriation; the former, if left uncultivated for a few years, are soon covered with brushwood and rank vegetation, in which are harboured vermin of all sorts, to the injury of the crops of contiguous owners, and shew no signs, except the absence of heavy forest, of ever having been cultivated; the latter, on the other hand, even if abandoned, do not disappear for many years, not, in fact, until the insidious growth of jungle chokes and kills the fruit-trees. Malay custom has, therefore, fixed three years as the term within which wet rice-fields, if left uncultivated, shall remain subject to the proprietary right of the owner. If wet rice-land remains uncultivated for more than that period, it is open to the Raja, Chief or headman, within whose district it is situated, to put in another

* "In practice there may be said to be but one original foundation for land "tenures in Burma, viz, that the cultivated-land clearer acquires an abso- "lute dominion over the soil, subject only to contribution for the service of "the State. He can alienate it by gift or sale, and in default of his doing so, "it descends to his heirs in the usual order of succession. The title to land, "therefore, is essentially allodial." *British Burma Gazetteer*, I, 438.

cultivator. Abandoned fruit-plantations, on the other hand, may be successfully claimed and resumed by the proprietor, or by any one claiming under him by descent or transfer, as long as any of the trees survive, and the proprietary right is not extinguished until all evidence of proprietorship is gone.*

A general view of the tenure of land in a Malay State has been given by Colonel Low ; † the State selected as a type of the rest being Kedah, as it existed before the Siamese conquest :— "The sovereign was lord of the soil, which the *orang bindang*, "or ryots, cultivated under regular tenures. The chief one was "termed *surat putus*, under which the occupier paid at the out- "set the price of one *mas*, or rupee, for every *orlong* of land. "He received this deed from the Raja, and it was stamped with "the chops of the latter and his ministers. It was in perpetui- "ty, and could not be alienated, but was subject to resumption "by the Government if the possessor allowed the land to go to "waste within a given period—sometimes thirty years. Instead "of a regular quit-rent, each ryot capable of labour was sub- "jected to a capitation-tax of 16 *gantangs* of paddy and one of "cleaned rice, which would now be equivalent to nearly a "dollar. This was occasionally commuted into a copper pay- "ment." But Colonel Low fails to remark, what I believe to be the case, that only a small portion of the land of the State,

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* This is what I have myself observed in Perak, and have heard declared by natives to be the custom of the country. It agrees with what MARSDEN says of the Malays of Sumatra :—

"Whilst any of those (fruit-trees) subsist, the descendants of the planter "may claim the ground, though it has been for years abandoned. If they are "cut down, he may recover damages ; but if they have disappeared in the "course of nature, the land reverts to the public."

† *Dissertation on Penang and Province Wellesley*, p. 6. The practice of using a written document has perhaps been borrowed by the Kedah Malays from the Siamese : "A *Chau Naa*, or cultivator, who is desirous of clearing "ground, applies to the headman of the village. The latter shews his written "application to the proper officer, who directs him to inspect the land and "measure it. The applicant, having cleared it, receives a written title ; but "although he is *not* in it vested absolutely with a right in perpetuity, still "the land forms thereafter a part of his *real* property, is alienable by deed of "sale, or by gift, and descends to his heirs at law. From this it is clear that "the King can take advantage of so defective a title. Prescription is the "owner's best safeguard."—Colonel Low, *Journ. Ind. Arch.*, I, 337.

and that the best *padi* land probably, is held direct from the Raja by *surat putus*. The restriction on alienation is, therefore, limited in operation, and the doctrine of proprietary right created by clearing and occupying is general.

The rules as to proprietary right may be stated as follows :—

1. There can be no proprietary right in *tanah mati*.
2. *Tanah hidop* is of three kinds :—
   (*a*) Land planted with fruit-trees (*tanah kampong*).
   (*b*) Wet rice-land (*tanah bendang*, or, *sawah*).
   (*c*) Hill-land taken up for shifting crops (*tanah huma*, or, *ladang*).
3. The proprietary right in *kampong* land endures during occupation and afterwards as long as any fruit-trees remain as evidence that the land is *tanah hidop*.
4. The proprietary right in *tanah bendang*, or *sawah*, lasts as long as the land is occupied, and for three years afterwards.
5. The proprietary right in *tanah huma*, or *ladang*, lasts as long as the land is occupied, which is usually a single season.

The rights of tenure in a primitive Malay settlement are thus exceedingly simple, if each proprietor is viewed as the owner of the piece of land which he has won for himself from the forest. The *kampong*, or village, is made up of independent holdings, and there is no such thing as a joint ownership, by the inhabitants of a village or tract, of cultivated lands, which is common in India. In long-established and populous settlements, the cultivated lands of which have been transmitted by descent for generations, there has, of course, been time for the operation of all sorts of influences—the result of a comparatively civilised state of society—which have contributed to introduce fresh modifications into the simple rules just enunciated. Thus, it will become necessary to consider, further on, the right of the Raja to a share of the produce, the liability of the proprietor for personal service, the right of the proprietor to sell and mortgage, the law of inheritance, &c.

## Chapter II.

## HUMA OR LADANG CULTIVATION.

The most primitive form of cultivation known to the Malays, and one that is practised by numerous Indo-Chinese tribes, is the hill-farm system.*

The Malay peasant who does not possess a *sawah*, or wet *padi* field, or who, possessing one, is unable, from want of buffaloes or some other cause, to work it, selects a piece of forest land on the side of a hill and proceeds to clear it by first cutting down (*tĕbas*) the under-wood and then felling (*tĕbang*) the forest trees.

Work is commenced about March or April, and when the fallen timber is dry it is set on fire; if this is skilfully done and advantage taken of wind, the whole is rapidly consumed, leaving a clear surface for agricultural operations. Charred stumps stick up in all directions on the clearing, and some of the lighter timber is turned to account in making a rough fence round the cultivated patch. Hill-padi (*padi huma*) is then sown by dropping a few seeds into holes made at short intervals with a pointed stick. Many Malays prefer the *ladang* system, as it is called, to the wet cultivation on the plains, for one reason, namely, the variety of different edible vegetables which a *ladang* will produce. Besides the hill-*padi*, he can grow on his farm bananas, Indian-corn, pumpkins and gourds, sugar-cane, chillies, &c., &c. Sometimes the same piece of land is cultivated in this manner two years running, but usually new land is taken up every year.

The Sakai and other aboriginal tribes who inhabit the interior of the Peninsula, also practise this system of hill-cultivation, and their clearings may be seen on the sides of the more distant mountains far removed from the districts inhabited by the Malays. Logan observed this among the wild tribes in the South of the Peninsula, and has described their mode of clearing and planting their *ladang*. †

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* "The custom of 'Chena' farms is of extreme antiquity in Ceylon. "It is alluded to in the Mahawanso, B. C. 161, ch. xxiii, p. 140."—Tennent's *Ceylon*, II, 463.

† *Journ. Ind. Arch.*, I, 455.

This is, no doubt, the national Malay mode of agriculture, and characteristically enough it is introduced into the legend which tells of the establishment of a royal line of Indian origin into Malay countries. The two peasant women whom the first Indian king meets when he descends upon the sacred mountain at Palembang, are described as engaged in cultivating a hill-garden (*ber-ladang*) where they plant hill-*padi*.* The successive processes of clearing, burning and planting appear to be carried out in Sumatra in precisely the same way as on the Peninsula.†

TENNENT's description of "Chena" cultivation in Ceylon is worth transcribing in full. It will be seen that he regards the disadvantages of the system as outweighed by its advantages:—

"The process of Chena cultivation in this province is uni-
"form and simple. The forest being felled, burned, cleared,
"and fenced, each individual's share is distinguished by
"marks, huts are erected for the several families, and in Sep-
"tember the land is planted with Indian corn and pumpkins;
"and melon seeds are sown, and cassava plants put down
"round the enclosure. In December, the Indian corn is
"pulled in the cob and carried to market; and the ground is
"re-sown with millet and other kinds of grain, chillies, sweet
"potatoes, sugar-cane, hemp, yams, and other vegetables, over
"which an unwearied watch is kept up till March and April,
"when all is gathered and carried off. But as the cotton
"plants, which are put in at the same time with the small
"grain and other articles that form the second crop after the
"Indian corn has been pulled, require two years to come to
"maturity, one party is left behind to tend and gather, whilst
"their companions move forward into the forest to commence
"the process of felling the trees, and forming another Chena
"farm.

"The Chena cultivation lasts but for two years in any one
"locality. It is undertaken by a company of speculators
"under a license from the government agent of the district,
"and a single crop of grain having been secured and sufficient
"time allowed for the ripening and collection of the cotton,

* *Journ. Royal As. Socy.* vol. XIII, N.S., p. 401.
† MARSDEN, *Hist. of Sumatra*, 62.

"the whole enclosure is abandoned and permitted to return "to jungle, the adventurers moving onward to clear a fresh "Chena elsewhere, and take a crop off some other enclosure, "to be in turn abandoned like the first; as in this province "no Chena is considered worth the labour of a second culti- "vation until after an interval of fifteen years from the "first harvest.

"During the period of cultivation great numbers resort to "the forests; comfortable huts are built; poultry is reared; "thread spun, and chatties and other earthenware vessels are "made and fired; and by this primitive mode of life, which "has attractions much superior to the monotonous cultivation "of a coco-nut garden or an ancestral paddy farm, numbers "of the population find the means of support. It likewise "suits the fancy of those who feel repugnant to labour for "hire, but begrudge no toil upon a spot of earth which they "can call their own; where they can choose their own hours "for work and follow their own impulses to rest and idleness. "It is impossible to deny that this system tends to encourage "the natives in their predilection for a restless and unsettled "life, and that it therefore militates against their attaching "themselves to fixed pursuits, through which the interests of "the whole community would eventually be advanced. It "likewise leads to the destruction of large tracts of forest land, "which, after conversion to Chena, are unprofitable for a long "series of years; but, on the other hand, it is equally evident "that the custom tends materially to augment the food of the "district (especially during periods of drought); to sustain "the wages of labour, and to prevent an undue increase in the "market-value of the first necessaries of life. Regarding it in "this light, and looking to the prodigious extent of forest land "in the island, of which the Chena cultivation affects only a "minute and unsaleable portion, it is a prevalent and plausi- "ble supposition, in which, however, I am little disposed to "acquiesce, that the advantages are sufficient to counterba- "lance the disadvantages of the system."

FORBES,* who also gives a full description of this system of

* *British Burma*, 281. "I am not aware that the *ladang* mode of cultiva- "tion offers any other advantage to the Malays than that it is compatible with "the enjoyment of a wandering life."—NEWBOLD, *Straits of Malacca*, I, 263.

agriculture as it prevails among the Karens of Burma, regards as "*their great peculiarity*, which they possess in common "with *all the hill-races*, not only of Burma and Assam, but of "the whole of India, their unsettled and ever-changing mode of "life, which entitles them to the designation of 'nomadic cul- "tivators.' To raise their scanty crops, the virgin forests on "the steep slopes of the hills must be cleared and burned; but "the excessive rainfall washes the friable soil off the surface, "so that only one crop can be raised on the same spot until "it has again become overgrown with jungle and a fresh "deposit of earth has formed."

The same practice exists among the more remote and uncivilised tribes in Siam. The husbandry of the people of Laos and of the Karieng tribe is thus described by PALLEGOIX :—"Les "Lao choisissent un endroit fertile dans la forêt voisine, en "abattent tous les arbres, et y mettent le feu, ce qui donne à "la terre une fecondité surprenante." *..... "Les "Karieng, de même que les Lao, ont coutume de couper et de "brûler chaque année une certaine étendue de la forêt pour "planter leur riz, changeant ainsi de place tous les ans, ce qui "les oblige à construire souvent de nouvelles cabanes." †

Cambodia furnishes another example :—

"La culture par le défrichement et l'incendie des forêts "adoptée par les habitants sauvages de l'intérieur est encore "bien plus barbare et plus regrettable. Ces pauvres gens se font "une idée exagérée des propriétés fertilisantes des cendres, qui "appartiennent, comme on sait, aux amendements utilisés seule- "ment pour introduire dans la terre les éléments minéraux "qui quelquefois lui manquent et qui sont nécessaires à la vie "de certaines plantes."..... "Ils abattent tous les arbres dans une certaine étendue du bois; "ils les laissent sécher un peu, et les brûlent sur place; ils "étendent les cendres uniformément sur le sol afin de l'amender "un peu, et au début de la saison pleuveuse, ils font des trous "regulièrement espacés dans le sol, avec un morceau de bois

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* PALLEGOIX, *Siam*, I, 40.

† *Id.*, 56.

"pointu, et dans lesquels ils laissent tomber quelques grains de "paddy qu'ils recouvrent d'un peu de cendres." *

This is also "the proper national mode of planting rice" in the Lampong districts (Sumatra), where such clearings are called by the Malay name *ladang*, corresponding with the Javanese "*tipar.*" It is practised in Java also. †

Further east, "nomadic cultivation" is still found, distinguishing tribes of cognate origin. The Dyaks of Borneo repeat year by year the toilsome operation of clearing forest land for their temporary farms. "They do not suppose that "the soil is in any way incapable of bearing further culture, but "give always as a reason for deserting their farms, that the "weeds and grass which immediately spring up after the *padi* "has been gathered are less easily eradicated than ground occu-"pied by old jungle is prepared. They never return to the "same spot until after a period of seven years has elapsed, "which they say was the custom of their ancestors." ‡

Among the hill-tribes of India, the same primitive mode of cultivation which Himalaic swarms have carried eastward to Burma, Siam, the Malay Peninsula, Sumatra and Borneo, may be viewed in the very districts, perhaps, in which it originated. The Kukis (north-east of Chittagong) cut down the jungle on the declivity of some hill in the month of March, and allow it to remain there until sufficiently decayed to burn freely, when they set it on fire, and thus at once perform the double purpose of clearing away the rubbish and of manuring the ground with its ashes. The women now dig small holes at certain distances in the spot so cleared and into each hole they throw a handful of different seeds they intend to rear. ‖

The Abors observe the same method of cultivation, but take three successive crops off it before abandoning it. ¶

In India and Burma the control of this practice has necessarily engaged the attention of district officers, and in some districts fiscal regulations have recognised this system of shift-

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* *Le Royaume du Cambodge*—MOURA, I, 25, 26.
† *Journ. Ind. Arch.*, V, 635.
‡ LOW—*Sarawak*, 232.
‖ *Asiatic Researches*, VII, 190.
¶ *Journ. Ind. Arch.*, II, 236.

ing cultivation, ensuring thereby a reasonable revenue to the State. In the Straits Settlements, on the other hand, where the necessity of making every cultivator take out a lease seems to have been the whole and sole guiding principle of the Land Office, the *ladang* or *huma* system has never been recognised and regulated. It is still practised, nevertheless, in parts of Malacca at a loss of revenue to the Colony. In Native States on the Peninsula it is, of course, common.

The following remarks on the temporary cultivation of hill-farms by certain tribes in India and Burma are extracted from Baden-Powell's *Manual of the Land Revenue Systems and Land Tenures of British India* (1882), p. 102 :—

"Shifting Cultivation.

"An account, however elementary, of Indian land tenures, "would be incomplete without some notice of a customary hold-"ing of jungle land which is widely prevalent in parts of India, "but which is of such a nature that it is very doubtful whether "the term 'land-tenure' can with propriety be applied to it. "I allude to the practice of temporary or shifting cultivation of "patches of forest, which has in some districts proved an obsta-"cle, or at least a source of difficulty in the way of making "arrangements for the preservation of wooded tracts as forest "estates, a work which modern science recognises as essen-"tial for almost any country, and especially a great continent "like India with its climatic changes and seasons of drought of "such frequent recurrence."

"In the jungle-clad hill country on the east and north of "Bengal, in the Ghâts of the eastern and western coasts of the "peninsula, in the inland hill ranges of the Central Provinces "and Southern India, there are aboriginal tribes who live by "clearing patches of the jungle, and taking a crop or two off "the virgin soil, after which the tract is left to grow up again "while a new one is attacked.

"This method of cultivation seems to be instinctive to all "tribes inhabiting such districts. It seems to be the natural "and obvious method of dealing with a country so situated.

"The details of the custom are of course various, and the "names are legion. The most widespread names, however, are

"'*jûm*' in Bengal, * '*bewar*' (often, but incorrectly, *dahyá*) "in the Central Provinces, '*kumri*' in South India, and "'*toung-yá*' in Burma.

"In all cases the essence of the practice consists in selecting "a hill side where the excessive tropical rainfall will drain off "sufficiently to prevent flooding of the crop and on which there "is a sufficient depth of soil. A few plots are selected, and all "the vegetation carefully cut: the larger trees will usually be "ringed and left to die;—standing bare and dried, there will be "no shade from them hurtful to the ripening crop. The refuse "is left on the ground to dry. At the proper season, when the "dry weather is at its height, and before the first rains begin "and fit the ground for sowing, the whole mass will be set "on fire: the ashes are dug into the ground, and the seed is "sown,—usually being mixed with the ashes and the whole dug "in together. The plough is not used. The great labour after "that consists in weeding, and it is the only labour after the "first few days of hard cutting, to clear the ground in the first "instance, are over. Weeding is, in many places, a *sine quâ non*, "for the rich soil would soon send up a crop of jungle growth "that would suppress the hill rice or whatever it is that has "been sown. †

"A second crop may be taken, the following year, possibly a "third, but then a new piece is cut, and the process is repeated.

"NATURE OF RIGHT TO WHICH SUCH PRACTICE GIVES RISE.

"When the whole of the area in the locality judged suitable "for treatment is exhausted, the families or tribes will move off "to another region, and may, if land is abundant, only come "back to the same hill sides after twenty or even forty years. "But when the families are numerous, the land available be-

* "*Jûm* is the general name used in official reports, but in reality this "name must be entirely local. In fact no one name can be applied. In the "Garo hills, in Chittagong, in Goálpára, in Santália, and no doubt in every "other district where this method of cultivation is practised, there is a differ-"ent local name."

† "But this is not always the case, where the hill land has long been subject "to this treatment, or where the soil is peculiar; in the Garo hills, I am told, "weeding is not required."

"comes limited and then the rotation is shortened to a number "of years—seven or even less—in which a growth, now reduced "to bamboos and smaller jungle, can be got up to a sufficient "density and height to give the soil and the ash-manure neces- "sary. In its ordinary form, this method of cultivation may "give rise to some difficult questions. It obviously does not "amount to a permanent, adverse occupation of a definite area "of land; nor does it exactly fall in with any western legal con- "ception of a right of user. In some cases it may be destructive "of forest which is of great use and value, in others the forest "may be of no use whatever, and this method of cultivation may "be natural and necessary. The progress of civilisation and the "increase in the population always tend to bring this class of "cultivation into the former category, and then it is very difficult "to deal with. It is impossible not to feel that whatever may "be the theoretical failure in the growth of a strict right, the "tribes that have for generations practised this cultivation from "one range of hills to another, have something closely resem- "bling a right; they have probably been paying a Government "revenue or tax—so much per adult male who can wield the "knife or axe with which the clearing is effected—which "strengthens their claim to consideration. In creating forest "estates for the public benefit, the adjustment of '*toung-yá*,' "'*kumri*,' " or '*júm*' claims has now become a matter of "settled and well-understood practice. In the Western Ghâts it "is becoming a subject of difficulty,* but the discussion of the

* "Already, in the Konkan, whole hill sides have been reduced to sterility, "while the soil washed by the heavy monsoon rains off the bare hill side, has "silted up and rendered useless, streams and creeks which were once navigable. "The difficulty is that the tribes are always semi-barbarous, and the task is to "induce them to overcome their apathy and take to permanent cultivation. "Unfortunately, sympathetic officials, properly alive to the necessity of kindly "treating these tribes, are usually totally blind to the real danger of destroying "the Ghât forests, or what is worse, professing to believe it, the belief has no "real hold on them. To abolish this destructive cultivation, serious and sus- "tained effort is necessary; to get the people to settle down, and to procure "for them cattle, ploughs, and seed-grain, requires liberal expenditure. It is "difficult to find officers who have the time or the zeal necessary for the first, "and financial difficulties are likely to be in the way of the second. An easier "course is to draw harrowing pictures of the suffering caused to the tribes by "stopping their ancient cultivation, and to denounce the efforts of the Forest "Administration as being harsh and without recognition of the 'wants of the

"question would be foreign to my present purpose, which is "merely to describe what is in fact a form of land occupation "or quasi-tenure."

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## Chapter III.

## THE RIGHTS OF THE RAJA.

Monarchical government was introduced among the Malay tribes by Hindu rulers from India, and a new element was thus added to the primitive structure of society theretofore existing. The settlement or group of settlements of individual cultivators (each deriving his right to his holding from the fact that he and his family or slaves had reclaimed it from the forest) who lived in tribes under elected Chiefs, or Penghulus, for mutual protection, now became subject to the incidents of Aryan kingly government.

The rights of the Raja in the early Hindu kingdoms in India were:—

1. The right to a share in the grain.
2. The right to collect taxes.
3. The right of disposal of waste land.

The proportion of the *padi* crop which the Malay Raja or Chief can claim has come to be fixed by custom at one-tenth of the grain, and payment can be enforced by seizure of the crop or land. A new qualification in the proprietary right of the

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"people.' It is unfortunate that the very forests at the head-waters of streams "with dense growth and steep slopes, which forest economy most imperatively "calls on us to preserve, are the very tracts in which this temporary cultiva- "tion is most insisted on."

land-holder has thus grown up in some districts. It was explained just now that his right, which was based upon original occupation, is absolute as long as that occupation continues; to this must now be added, "*and as long as a proportion of the grain is paid to the Raja or Chiefs.*"

The rate of one-tenth of the produce thus leviable by Malay custom is, it should be observed, the same as the rate still collected under a law based upon native custom, in Ceylon. So, in China, "the land is held as a freehold as long as the "sovereign receives his rent, *which is estimated at about one-*"*tenth of the produce*, and the proprietors record their names "in the District Magistrate's Office as responsible for the tax, "feeling themselves secure in the possession while that is paid."* In Cambodia, too, the share of the sovereign is one-tenth of gross produce. † Low, speaking of Siamese rule in Kedah, says: "The Siamese, following the code of Menu, affect to exact only "one-tenth of the gross produce value, but the tax is more than "doubled in practice."‡

The right of the Raja to dispose of waste land cannot have been seriously exerted in Malay States in respect of forest land. The old Malay custom which permitted the free selection and appropriation of forest land for the purposes of cultivation was not interfered with, the adoption of any other course being almost impossible in countries the greater part of which was under forest. As regards abandoned land, or land to which there was no heir, it was, no doubt, different, and the rights of the Raja were often duly enforced. It is not difficult to see how the rights of the Raja to demand a proportion of the produce, on pain of forfeiture of the holding, and to dispose of waste land, tended by degrees to create the doctrine that the right to the soil was in the Raja. Such a doctrine did in fact grow up, and being, to all appearance, consistent with the rights exercised by the Raja, and not incompatible with the proprietary rights claimed by the Malay land-holder, it has received complete acceptance in Malay States. It was

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* *The Middle Kingdom*—WILLIAMS, II, 100.

† *Le Royaume de Cambodge*—MOURA, I, 264.

‡ *Dissertation on Penang and Province Wellesley*, 6. *Journ. Ind. Arch.*, I 336.

not incompatible with the rights of the owner of the proprietary right, for he did not claim an allodial right to the soil, but merely the right to appropriate and keep for himself as much land as he had the power *(usaha)* to clear and keep in cultivation. There was no necessity, from his point of view, to ask in whom the absolute property in the soil was vested; he did not claim more than a usufruct, continuous as long as he chose it to be so, and terminable on abandonment.*

That the soil of a Malay State is vested in the Raja is a doctrine not now to be questioned, though it may have originated in confusion of thought, the exercise of the rights to collect the tenth and to dispose of abandoned land being assumed to imply the existence of a superior right of property in the soil, to which the rights of proprietorship were subor-

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* "In the times of the early Hindu village communities, proprietary rights, "as defined by powers to alienate, existed to a very trifling extent. In the "more ancient form of community, as has been said, tenures had no market "value; and in the later and more democratic communities where rights "were more decided, the land was not an individual but a common property, "and one man could not without the consent of the others sell to a stranger. "Still transactions occurred in the latter case among the members of the "community themselves, which showed an individual ownership within that "limit. Sales were not common, and mortgages were usually not foreclos-"able for a very long period; but the latter existed in abundance, showing a "certain value in individual ownership of landed property. Individual pro-"perty in land sprung up earlier than elsewhere in the districts on the west-"ern coast, probably owing to the political circumstances which rendered "the Government authority weak and the State demands light. The attitude "of the Hindu rajahs with regard to the soil has been much discussed. It "probably varied entirely with the circumstances of times and places. The "object of Government is to obtain revenues for Government purposes. If it "found communities so organized as to be able to farm the villages properly "and to render the proper State dues, the Government would not interfere "in the direction of the disposal of the lands claimed by the community. "If it found an imperfect organization it would be forced to interfere "in the disposal of the lands, especially of the waste lands, with a view to "the proper development of the country and realization of the revenue. "The tendency probably was for the villagers to lean more and more on the "Government in these matters, and hence in many parts of the country the "State interference became a regular institution. Still there is no evidence "that any Hindu government ever took the step of ejecting an occupier; "even if they failed to obtain their dues from him they limited their repri-"sals to personal torture or sale of moveable property. The sale law is not "a native institution. The discussion whether the Indian governments are "'proprietors of the soil,' or not, seems to be little more than a dispute "about words."—*Standing Information, Madras*, p. 78.

dinate. The right of the subject of a Malay State to appropriate and cultivate, and thus acquire a proprietary right over, land which, though once *tanah hidop,* has been abandoned and has relapsed into *tanah mati,* is unquestioned * ; it is not inconsistent with any supposed right of the Raja to the soil of the abandoned holding, for Malay tenant right may be established by a cultivator over the land of another. The Raja's absolute property in the soil, is but a barren right, and as he undoubtedly has, independently of it, the right of levying tenths and taxes and of forfeiting lands for non-payment, Malay law does not trouble itself much with speculation about it. Tenant right is the cardinal doctrine of the Malay cultivator, and, as long as that is fully recognised, it does not matter to him who or what functionary or power may, in theory, be clothed with the original and supreme right to the soil. †

When Malay laws speak of the grant by the Raja of lands *already under cultivation* to some Chief or royal favourite, it must be understood that what is granted is the right to exercise the royal privileges of claiming from the cultivators a tenth of the produce and of disposing of abandoned and forfeited lands. The Raja's property in the soil is not parted with, and the tenant right of the cultivators is in no way interfered with. The grants of the local Dutch Government in Malacca parcelling out the district to a few privileged individuals, which gave

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* Appendix I, p. v.

† "It does not appear from any of the Siamese writings examined by me, "or from information orally obtained, that the sovereign is the virtual pro- "prietor of the soil. That he is perfectly despotic cannot be doubted. But "eastern despots generally encourage agriculture, and however the case may "have stood originally, it is evident from law cases quoted in the digests and "decisions that the occupiers of the land have a firm prescriptive, if not an "indefeasible proprietary right in it. Perhaps their Kings may have deemed, "and with truth, that their own prosperity was linked with the admission of "that right; and hence may have arisen the fixed assessment on landed pro- "perty, which has not altered since the days of the earliest intercourse of "Europeans with Siam. It is collected either in kind at 10 per cent. or in "money. Ten per cent. on the value of the net produce is here meant. "Although this, for Asia, is a light tax in itself, yet when taken in conjunction "with the obligation to personal service for the State and with other exac- "tions to which all are liable, it will be found on the whole oppressive. Be- "sides, the Kings will often break through all law, social and moral."—Colonel Low—*Journ. Ind. Arch.*, I, 336.

so much trouble to the officers of the East India Company on their succession to the Government of that Settlement in 1825, were of this nature.* The grantees were nothing more than a species of what are called in India "Zamíndárs." The absolute right of the cultivators to retain possession of their holdings as long as they paid to the grantees tenths of the produce, was in no way prejudiced, nor was the customary right of every native of the country to take up forest or waste land wherever he pleased and to bring it into cultivation. The grants were in accordance with Malay tenure, and in no sense corresponded with the English idea of a freehold holding. Nevertheless, there are not wanting, on the part of the few remaining grantees, attempts to assert that their rights within the districts granted to them include the fullest proprietorship of the soil, and to act as if they were the owners of the freehold. This is an illustration of the tendency to argue the acquisition of a proprietary right from the exercise of certain powers which, until their history is examined, seem to be inconsistent with any other position. So, in Bengal, the *Zamíndár*, who was, in the inception of the native revenue system, a revenue official, or agent, established in course of time hereditary and proprietary rights and came to be looked on eventually as the proprietor of the district over which he exercised the rights assigned to him. Had the Straits officials from 1825 understood the true bearing of the position, according to Malay law, as the Dutch undoubtedly did (for the same system is recognised in some districts of Java), it would have been possible, perhaps, to have left the grantees in possession of their *Zamíndári* rights, to have assessed the land revenue of their respective districts at a fixed sum, and to have exacted full payment of this, leaving the *concessionaire* to collect the tenth in detail from his tenantry.

The following principles regarding land tenure in Java had been laid down by Sir Stamford Raffles only eleven years before the settlement with the Malacca grantees took place †:—

"The nature of the landed tenure throughout the island is now

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* *Journ. Ind. Arch.*, II, 740.

† *Revenue Instructions*, 11th February, 1814.

"thoroughly understood. Generally speaking, no proprietary "right in the soil is vested in any between the actual cultiva- "tor and the sovereign; the intermediate classes, who may "have at any time enjoyed the revenues of villages or districts "being deemed merely the executive officers of Government "who received these revenues from the gift of their lord; and "who depended on his will alone for their tenure. Of this "actual proprietary right, there can be no doubt that the "investiture vested solely in the sovereign; but it is equally "certain that the first clearers of the land entitled themselves, "as a just reward, to such a real property in the ground they "thus in a manner created, that, while a due tribute of a cer- "tain share of its produce was granted to the sovereign power "for the protection it extended, the government in return was "equally bound not to disturb them or their heirs in its pos- "session. The disposal of the government share was thus, "therefore, all that could justly depend on the will of the "ruling authority; and consequently the numerous gifts of "land made in various periods by the several sovereigns have "in no way affected the rights of the actual cultivators. All "that Government could alienate was merely its own revenue "or share of the produce. This subject has come fully under "discussion, and the above result, as regarding this island, has "been quite satisfactorily established."

The following description of the mode of creating these *quasi-manorial* rights in Java, and the nature of the rights created, from which it will appear that the Dutch in their Eastern possessions have simply adopted the native law of tenure and have not introduced one of their own, is translated from Winckel's *Essai sur les Principes régissant l'Administration de la Justice aux Indes Orientales Hollandaises* (1880), p. 141. It is entirely in accordance with Malay law, and the principles laid down apply, to a great extent, to the private rights in Malacca which Governor Fullerton bought up, with few exceptions, in 1828:—

"Following in this respect the general Muhammadan law, "at least in part, the ancient Javanese sovereigns* used to

* "This is still done in Java on the lands of the Susuhunan of Sourakarta "and the Sultan of Jokjokarta. But there the thing has been ably worked

" pay their functionaries and shew favour to their relations " and favourites, not with hard cash, but by a delegation of " sovereign rights consisting in the right to exact a share of " the produce of the soil (from one to four tenths) and that " of requiring the cultivator to work (in some cases, one day " out of every five) either for the pecuniary profit of the lord " or merely to gratify his taste for ostentation by swelling his " train.

" The delegated ruler (who exercises police control and even " administers justice to some extent) is not the owner of the " soil in the European sense of the word. He cannot, for " instance, evict the cultivator from it; but the latter is obliged " to pay the tithe and to take a part in the forced service.

" Our ancestors found this system in force in Java and " imitated it.

" These sovereign rights have been conceded by the influ- " ence of money, but in perpetuity, contrary to Muhammadan " law.

" The European governments which have followed have " often done this and have had cause to repent it.

" Be that as it may, in the Residencies of Bantam, Batavia, " Krawang, Cheribon, Tagal, Samarang, Japara, Sourabaya " and Pasaruan, there are these 'private lands' (*terres par-*

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" by Europeans. They, never natives or Chinese, take on lease, with the " consent of the Dutch Government and for twenty years at most, the rights " delegated to members of the royal family and to the officers of their High- " nesses. It is the Europeans, who, instead of using the *corvée* to secure a " numerous suite, turn it to account in indigo factories, sugar-mills and coffee " plantations. Often, instead of a share of the produce of the soil, they " take a share of the soil itself. This organisation has given incredible " scope to European enterprise, has demoralised the native nobility, and " has given more intelligent and therefore more indulgent masters to the " common people.

" If, as it is high time it should be the case, these phantoms of sovereigns " were deprived of their power, and the administration were put on the footing " of the 'Government' lands, the source of European industry would dry " up, and the common people would not gain very much, *from a practical* " *point of view*; the minor chiefs alone would profit. Effort was made fifty " years ago to put a stop to the 'farming out of the land' *(bail des terres)*, " but the ancient system was reverted to, tempered by the, by no means no- " minal, control of the Dutch officials."

" *ticulières*).* Those of Krawang—only two in number and " comprising 313 and 51 villages, respectively, with a popula- " tion of nearly 180,000 souls—exceed in extent and importance " many an European State.

" These little principalities have been objects of dislike to " the Dutch power, ever since, dating from the fall of the " noble Company, there has been a governing government : to " the Company, commerce was always the chief thing. Some- " times the government has repurchased them ; † on other " occasions recourse has been had to not very honourable " means in order to obtain possession of them.‡

" It is certain that these lands, especially those of no great " extent and cultivated by Chinese, might support a happier " native population. Nevertheless, for some years past com- " plaints have much diminished, thanks probably to the strict " control of the government.

" However that may be, it was supposed in 1854§ that it " was particularly against these absolute principalities that " ill-will was entertained in high places, and guarantees were " accordingly asked for. The governments protested, saying " that such a use of the law of dispossession would be an

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* " In Dutch, *particulier landbezit*. The origin of some of these conces- " sions is not a little mysterious. The *Bulletin des Lois*, 1836, No. 19, con- " tains the Ordinance for the West of Java regarding ' private lands.' We " regret that this interesting subject is beyond the scope which we have " prescribed to ourselves. It is too extensive to be treated of in a note. " Let us be satisfied with saying that the Court of Justice of Batavia (BOER's " case, 5th June, 1878, Indisch Weekblad van het Regt, No. 784) admits as " an extenuating circumstance the fact that the Ordinance is incomplete " and bad, and that this has greatly contributed to the commission of acts " of violence. See the splendid reports of M. VAN DISSEL on the private " lands of the East of Java, printed by the Society of Industry and Agri- " culture, Batavia, 1878."

† " For instance, the present regency of Probolingo in the beginning of " the century."

‡ " Sukabumi, for instance."

§ " At the time of the passing of the Regulation for the Government of " Netherlands India, article 77 of which commences as follows :—' No one " ' may be dispossessed of his property, except, in the public interest, in the " ' manner laid down by a general legislative act, and in consideration of " ' preliminary indemnification.' "

" enormous wrong against which no law could give a guaran-
" tee except that provided by Article 24, para. 1, of the Re-
" gulation for the Conduct of the Government, which forbids
" the Governor-General to sacrifice on his own authority the
" important principles of administration.

" Let us admit that an express allusion would have settled
" the matter better. There is nothing now to prevent, if not
" the Governor-General, at all events the King, from discover-
" ing some fine day that the dispossession of the 'lords of the
" soil' * would be in the public interest, especially since a
" good many people are already of that opinion.

" But let these gentry be re-assured: for many years to
" come the government of India will not be able to afford the
" immense sums † which such a measure would require, even if
" there should be found at the head of this government a man
" bold enough to undertake it."

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## Chapter IV.

## THE METHOD OF COLLECTING THE TENTH.

The exaction of a tithe of the produce of land is by no means an universal tax in Malay States. In those States which are governed by Rajas, there are also hereditary chiefs who intercept most of the revenue of particular districts, and in small quasi-republics like the Negri Sambilan taxation is practically unknown. The only purely Malay province in which I have personally seen the tenth of the grain collected by a native

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* " *Landheer* in Dutch; *Tuan tanah* in Malay."

† " We are reminded that one of the estates of the Residency of Krawang
" has been encumbered (to prevent a partition, we believe) with a mortgage
" of six millions of florins. However, we are not competent to say what is
" the value of lands of this kind. All that we know is that they pay well
" worked by an European; a little less in the hands of a native farmer;
" enormously farmed out to a Chinaman."

Government is the Krian province in Perak. Before 1874, the coast district lying between the Krian river and Pasir Gedabu was regarded as a personal estate of the reigning Sultan. It contains an extensive area of very fertile paddy-land, cultivated chiefly by Malays of Penang and Province Wellesley, who used in former times to live principally in the British Settlements, giving across to Krian during the *padi* season and removing their grain, when harvested, to their homes by the sea. The fact that most of the *padi* was taken out of the country in this way made it easy to collect the tax at the time of export, and at the time I speak of (1874), the headman upon each creek exacted, instead of an assessed tenth, a fixed tax of thirty *gantangs* of *padi* for every orlong cultivated, in money or kind, before a land-owner was allowed to export his grain to British territory. Those who lived permanently in Krian and did not export their *padi* had to settle with the Penghulu at the same rate. He kept a roll of the cultivators in his district, and estimated roughly, or by actual measurement, the area cultivated by each.

The inhabitants of this district paid also a capitation tax of $2.25 per family, or $1.12½ per every unmarried male adult.

These taxes were not levied in Perak proper, first, because it is not a great grain-producing country, and taxation would have discouraged cultivators and caused them to abandon cultivation for mining—the principal industry of the State; secondly, because the inhabitants of Perak proper were always available for the performance of forced services of all kinds, whereas the cultivators of Krian were a shifting population who spent most of their time in British territory.

It is evident that the Krian system of collection at the time of export is one not suited to a country in which the grain produced is intended for local consumption. It is not clear how the tithe of the produce of the Naning rice-fields, which, by an agreement made in 1644, became payable to the Dutch Government at Malacca,* was intended to be collected. It may have been levied upon cargoes coming down the river, but more probably it was never effectually exacted. In Kedah, following the Siamese custom, the practice seems to have been

* Newbold, I, 203.

to require the cultivator, under fear of punishment, to deliver the tax in money or kind at a certain place. "Grain-holders "were forced to deliver the rice into the Raja's granaries "at the price he chose to fix on it, which always left him a "profit of about 20 per cent., nor could they sell grain without "special permission."*

The method of levying the tenth on the rice-crops in Malacca is thus described by NEWBOLD: † "When the grain is ripe, a "person on the part of the Government visits the rice-fields, "attended by the owner, the Panghulu, or Mata-Mata, of the "village and several of the oldest inhabitants, on the spot, in "order to agree upon and assess the value of the crop. A dif- "ference of opinion will naturally sometimes arise between the "taxer and the taxed. This is submitted to the arbitration of "the Panghulu and the village elders. But should these persons "again assess the crop at a lower value than the Collector's "agent really thinks it worth, the latter has still the resource of "offering to purchase the whole of the crop on the part of "Government, at a price according to the owner's valuation. "This proposal, whenever made, has been, I believe, invariably "refused. It is not, therefore, improbable, all circumstances "considered, that not more than seven or eight per cent., at the "most, ever finds its way into the Company's godowns. The "tenth in kind on paddy is sold, whenever a good price can be "procured for it, on the spot, and the proceeds lodged in the "Treasury. The tenth on the other articles of land produce is "levied at tolls placed at the entrances into Naning from Malac- "ca, and there immediately sold."

This account describes a purely native procedure, for, fifty years ago, when NEWBOLD wrote, just as at the present time (1884), no mode of collecting the tenth was provided by law. The absence of legal powers to punish the evasion of the well-known customary regulations does not, however, seem to have prevented the collectors from using their position as oppressively in a British possession as in a Native State.‡

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* LOW—*Dissertation*, p. 7.

† *Id.*, p. 261.

‡ *Correspondence relating to the Land Revenue System of the Straits Settlements*, 1837-44, p. 61.

Sir EMERSON TENNENT, in his account of Ceylon, though he describes the manner in which the tenth is collected there under British Colonial rule,* does not state how, if at all, this varies from the practice which obtained under the native administration, but I find a very full description of the collection of a tithe on grain in an Asiatic kingdom in MOURA's *Le Royaume de Cambodge*, which is interesting as shewing the extreme elaborateness of the procedure found necessary. It is instructive to compare the published descriptions of the efforts made during the last fifty or sixty years to collect the Malacca land revenue, one long history of want of knowledge on one side, and fraud and evasion on the other, shewing "how cruelly the "subject has been neglected and mismanaged,"† with what this author is able to state as regards Cambodia, "no difficulty or "delay is ever experienced in getting in this tax"!

"The rice-harvest is gathered between November and January, "according to the forwardness of the crops. Towards the "month of January, the King sends out into each province an "envoy, who is the bearer of a royal order conferring on him "the right of estimating the rice-crops realised by the owners, "and of deciding the portion due to the State, that is to say, "a tenth of the gross produce. The envoy is always ac- "companied on this mission by an agent of the Storekeeper- "general of Phnom Penh. They proceed together to the "province which has been assigned to them, and exhibit their "credentials to the Governor. On sight of the King's seal, "the Governor prostrates himself three times; he at once "causes candles and joss-sticks to be lighted and places them "on the ground in front of him, and he then listens, lying on "his face, to the reading of the royal edict. He himself at "once draws up instructions to the various *employés* of his "province, so that the task of the envoys from the capital may "be facilitated everywhere and that the reception to which "they are entitled may be accorded to them. Lastly, the "Governor nominates from among the local authorities a third "delegate, who forms one, *ex-officio*, of the committee of "measurement. This delegate represents the interest of the

* TENNENT'S *Ceylon*, II, 170.
† BLUNDELL—*Journ. Ind. Arch.*, II, 741.

" Governor, who gets one tenth of the share of rice which falls " to the State."

" In the villages they prepare beforehand great *salas* (halls) " for the shelter of the deputation, the members of which are " received at the border of his jurisdiction by the headman, " who instals them in the quarters prepared for them. As " soon as they have settled down and are somewhat rested, the " headman of the village joins them and presents *' the cloth " of the oath,'* a piece of cotton stuff five cubits long which is " accompanied by five coins (worth about forty centimes), a " cock, as door-keeper of the *sala,* and lastly some fresh betel " leaves and peeled areca-nuts. The headman prostrates " himself before his offering, and the royal delegate solemnly " reads out his instructions. This recital over, the headman " swears to conduct himself in the matter as an honest func- " tionary and one anxious for the interests of the State, and " not to lend assistance to any fraud calculated to withhold " any portion of the crops of his district from the researches " of the collectors."

" Next they proceed to examine, house by house, the heaps " of rice; these are valued, and against the name of the person " liable for the payment, there is entered on a register one- " tenth of the quantity found, representing the tax due to the " State; this the proprietor himself is under the obligation of " conveying to the capital, together with a delivery order which " the King's envoy delivers to each cultivator before leaving " their house."

" When the circuit is finished, the Committee return to the " chief town of the province, where three precisely identical " registers are drawn up recording their labours; one of these " registers is for the King, another is sent to the keeper of " the rice-granary, and the third remains in the hands of the " Governor. No difficulty or delay is ever experienced in " getting in this tax."

" Rice which has been exported before the arrival of the " collectors in the district has, of course, had to pay the tax of " one-tenth at the custom house, and the cultivator has nothing " to do but to shew the receipt of the custom-house officers."

" Forest produce, such as cardamums, gutta-percha, bees'

" wax, etc., are taxed in a different manner. The inhabitants " of the forest are required to work these articles; the law " prescribes what amount each family must furnish to the " State annually, and everything exceeding this is for themselves. " Timber is charged with a trifling duty when felled and after- " wards with a tenth of its value on passing the custom " house."*

It is almost incredible that the Colonial Government has not got proper powers for collecting the tenth, but native custom is hardly sufficient warrant to enable Courts governed by English law and practice to punish by fine and imprisonment breaches of a purely native revenue system, which has not been specially adopted by the Legislature. Governor FULLERTON, in a minute dated the 18th May, 1829, asked: " How are we " to regulate decisions at Malacca? There the sovereign right " is one-tenth of the produce; the Dutch made over the right " to certain of the inhabitants more than 100 years ago. This " Government, by way of ensuring increase of cultivation and " introduction of population, redeemed the right. How are " we to levy the tenth if refused? The land tenures at Ma- " lacca bear no analogy or resemblance to any English tenure; " yet by such they must, in case of doubt, be tried. Regula- " tions adapted to the case have indeed been sent to England, " but until local legislation is applied, and the mode of admi- " nistering justice better adapted to the circumstances of the " place, it seems to me quite useless to attempt the realisation " of any revenue whatever."†

The problem is still unsolved, as the following extract from an official report laid before the Legislative Council of the Colony last year shews:—

" The valuation of padi before the assessment of the Govern- " ment tenths seems to be carried on in a perfunctory way. " The system is purely customary and its details have never " been regulated by any law. When the padi in a district is " ripe, a Clerk (Eurasian or Malay) is sent there. He visits " the rice-fields with the Panghulu. A little of the padi is " cut and examined, and an estimate is formed of the probable

* MOURA—*Le Royaume de Cambodge*, I, 264.
† *House of Commons Papers*, 320E., *October*, 1831.

"yield and what is the assessed tenth. These Clerks are "ignorant, and the correctness of their returns is not checked "in any way. They are entirely dependent upon the Pang- "hulu for information as to the names of occupiers and the "extent of their cultivation. These may vary annually, for it "is the cultivator (not necessarily the proprietor, but possibly "a tenant for the season only) who has to pay the tenth, and "only a portion of a given holding may be under cultivation."

"When the Clerk has finished his assessment of a district, "a copy of his return is made out in Malay and sent to the "Panghulu. The latter collects the money from the ryots "and pays it to the Land Office, receiving a commission of ten "per cent. on the amounts collected. This procedure is sanc- "tioned by custom only and not by law. There is no sum- "mary method of punishing a cultivator who cuts his crop "before it has been assessed, or a Panghulu who fails to attend "the valuation Clerk, or the Panghulu, or Clerk, who makes "a dishonest assessment or return."*

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## Chapter V.

## SUB-TENANCY.

"Persons," says the Malacca Code, "who settle on the "lands or plantations of others, must obey the orders of the "proprietor, and if they oppose him, they may be fined ten "*tahils* and one *paha*. It is the duty of all the dwellers on "the land to co-operate with the proprietor."

* *Proceedings of the Legislative Council of the Straits Settlements for* 1883, p. 392.

This passage indicates the existence of a class of sub-tenants subordinate to a proprietor, and that the tenant right of these people includes fixity of tenure may be gathered from the fact that a refractory tenant is liable to fine only. There is no hint of eviction. The peasant cultivator, or sub-tenant, who enters into occupation of the land of another, with his consent (unqualified as to time), acquires, therefore, a proprietary right, subject to the right of the other to a share in the produce of the land, and subject to the liability of being fined if he does not obey his feudal superior.

Thus one proprietary right may spring up within another, and this may go on *ad infinitum* ; in Bengal, since the permanent settlement, as many as eighteen and twenty distinct rights may sometimes be discoverable between the *Zamíndár* and cultivator. So among the Malays a man who, by his personal industry, or by the co-operation of his family and slaves, or by inheritance, finds himself in possession of more land than he wishes to cultivate, can, by admitting sub-tenants, secure himself an annual return, in kind, of grain or fruit, besides adding to his importance by the acquisition of a number of neighbours who are bound to recognise his superior proprietary rights and to obey him on pain of fine. The first proprietor who, as was stated at the outset, is bound to keep up continuous occupation or cultivation, performs this duty vicariously in the persons of his sub-tenants, and they again, if they choose, create fresh sub-tenancies on the same system.

If cultivation, or the payment of the tenth, ceases on the part of the tenant for a period prescribed by custom (See *supra* p. 77) his tenant right lapses.

This is the explanation of the decision in the case of *Abdullatif* v. *Mahomed Meera Lebe* tried in Malacca in 1829. The plaintiff, who brought an action to recover possession of a piece of land, was non-suited. Apparently he was a proprietor who had admitted a sub-tenant on the customary agreement to pay one-tenth of the produce, and he desired to regard this as a tenancy terminable at the will of the proprietor. But the Court upheld the right of the sub-tenant, or cultivator, to fixity of tenure as long as the land was kept in cultivation and the tenth paid. (See *Appendix, III,* p. xxxvi.)

In this case, it was laid down, among other things, that "the owner of the soil* (proprietor?) may sell or otherwise "dispose of his interest without prejudice to the cultivator, "and the cultivator *vice versâ*." This is, of course, quite consistent with the existence of separate rights, but these are not necessarily confined to two persons, the possessor of the first proprietary right (whom, for convenience sake, I have hitherto called the proprietor) and the cultivator, but there may intervene any number of subordinate proprietary rights, one springing from within another.

Where a chief or royal favourite or some powerful individual or family has obtained a grant from the Raja, or has usurped the right of the Raja to levy tenths and taxes and to dispose of abandoned land, a relationship between this superior proprietor and the cultivator is established, which soon develops into a system of tenancy, which is not readily distinguishable from that just described. The tenant continues to be the proprietor of his holding on fixed tenure, subject to the customary terms, while the rights of the superior proprietor, be they the creation of the Raja, or inherited, or the result of usurpation, become, in course of time, so fixed and continuous as to favour the impression that they include ownership of the soil. The position, therefore, which the judgment in *Abdullatif* v. *Mahomed Meera Lebe* discusses as existing between "the owner of the soil" (see note at foot) and the cultivator, may be created either by the admission of a tenant by a proprietor already in possession or by the establishment of a proprietor over the heads of cultivators already in possession. In a Malay State, the exercise of the rights of the superior proprietor are liable to much fluctuation. The despotic power of the Raja in petty Asiatic States is, of course, fatal to anything like

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* With all deference, I conceive that the learned Recorder was in error in using the term "owner of the soil." The first proprietor has really only a proprietary right (unless, in Malacca, he has purchased the freehold from the British Government), which depends upon continuous occupation and payment of tenths to the Raja or Government, but, of course, in a district where land is valuable, occupation is certain to be continuous and thus the first proprietor comes to be regarded as the "owner of the soil."

security of rights of property * and everything depends upon the personal energy and family influence of the person who claims the superior rights. There will always be other candidates for royal favour who will seek to supplant him in his rights if they are profitable (the rights of minors are almost certain to be invaded in this way), and the cultivator is always anxious to be recognised as an independent proprietor. One man will make good his right to receive tenths from a whole district and to regard the cultivators as his tenants, while his successor may, perhaps, on some show of opposition, tacitly abandon all such claims and leave the cultivators to be recognised in course of time as separate proprietors. All this is quite inconsistent with any notion of "ownership of the soil," though it is easy to see how a systematic and continuous exercise of proprietary rights would lead an English Court to assume that such ownership existed. I entirely repudiate the theory of "ownership of the soil" as incidental in any way to the Malay system of land-tenure, and all the evidence shows that the Dutch grantee in Malacca had simply the rights of a Malay *tuan tanah*, such a one as I have described as being put in by the Raja over the heads of the cultivators.

The right of the proprietor to require obedience from his tenants raises a new question—the liability of the cultivator to forced labour.

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* "From the facts already adduced, regarding the state of landed tenures, "it will have appeared that the proprietary right to the soil is unquestionably vested in the Sovereign. This principle is so universally established, "and so frequently exercised, that it is almost superfluous to offer any proof "of it. Such is the fluctuation of landed property from the operation of "this principle that there is not, perhaps, all over the country, at the present "day, ten *jungs* of land in the possession of the descendants of those who "held them fifty, nay, thirty years ago. The actual effect of the principle "is, indeed, even more violent than we should be led at first sight to argue. "The descendants of those who, no great number of years ago, were in "affluence, holding the highest employments of the State, and, consequently, "important and valuable tracts of land, may now be seen not only not "inheriting the possessions of their forefathers, but hardly enjoying the "bare means of subsistence, and reduced to a level with the meanest of the "people." CRAWFURD—*Report on Nature and Condition of Landed Tenures under the Native Government of Java. Quoted by* RAFFLES: *Minute on Administration of Java*, p. 92.

## Chapter VI.

# THE LIABILITY OF THE CULTIVATOR TO FORCED SERVICE.

In a land regulation passed by the Governor in Council in the Straits Settlements for the Settlement of Malacca (IX of 1830), there occurs a clause which declares cultivators to be exempt from forced labour. This regulation, if it ever had the force of law, was repealed a few years afterwards, and none of the Land Acts now in force in the Straits approach the subject at all. Whether or not the liability to forced labour from which Malacca cultivators were declared to be exempt in 1830, still survives, though dormant, as one of the incidents of the local customary tenure, is not a question of much importance now, for there is little likelihood of any attempt being made to enforce it on a large scale in a British Colony. But it is clear that, if there had been no existing liability in 1830, there would have been no necessity for special exemption. A code of regulations for Penghulus, which the Dutch authorities were about to introduce in Malacca just before the cession in 1825, contains a clause requiring the Penghulu to keep all roads in order and to call on the tenants to repair them. This, too, assumes a pre-existing duty on the part of the tenants.

Mr. Fullerton, Governor of Penang and subsequently of the incorporated Settlements (1824 to 1830), recorded that, under the Dutch Government in Malacca, services were required and labour exacted, from the tenants; that they were, in short, kept in a state of vassalage and servitude quite inconsistent with the encouragement of cultivation.*

The cultivator or tenant, who was thus liable to be required to work for the Government or superior proprietor, was the holder of the proprietary right which has already been described. In Malay States, the liability still exists, and, for the complete understanding of the *ra'iyat*'s position, it is necessary to ascertain, as nearly as possible, what is the extent of his liability to forced service, how far it is an incident of his

* *Journ. Ind. Arch.*, II, 740.

tenure of his land, what is the mode of enforcing obedience, and what is the penalty for contumacy. With the exception of the extract at the head of the preceding chapter, I have met with no passage in Malay laws which affects these questions; there is no written definition of the nature and extent of the services which a Raja or Chief or superior proprietor can exact from the cultivator. In a Malay State, the exaction of personal service from the *ra'iyat* is limited only by the powers of endurance of the latter. The superior authority is obliged, from self-interest, to stop short of the point at which oppression will compel the cultivator to abandon his land and emigrate. But within this limit, the cultivator may be required to give his labour in making roads, bridges, drains, and other works of public utility, to tend elephants, to pole boats, to carry letters and messages, to attend his Chief when travelling, to cultivate his Chief's fields as well as his own, and to serve as a soldier when required.* Local custom often regulates the kind of service exacted from the

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* RAFFLES, writing to Lord MINTO in 1811 on the disadvantages of allowing Siamese influence to preponderate in Kedah, thus describes the status of the Siamese peasant:—"Both persons and property are at the command of "the King, and, of course, at the command of his Officers in recession from "the lowest to the highest; hence no man will rear what he cannot call his "own. Certain months are allowed the many to plant and reap their paddy: "and this when stored is sacred and cannot be taken from their possession; "with this exception all the rest of their time, exertions, or acquirements "may be taken by the King or his Officers if so inclined." *Life of Raffles*, p. 52.

The Burman seems to be little better off:—

"*Corvées* and enforced duties of all kinds are frequent, and the men "selected for such service can only get off by furnishing a substitute or "bribing the tithing-man. The King or some great man wants to build "a pagoda, and orders are sent round to the various circles that they must "furnish a regular supply of workers daily. The *taik* or *myo-thoo-gyee* "draws up a roster, and each man has to go to work for a certain number "of days. If he fail to go, he is tied up to a post or a tree and gets a "sound flogging. Similar forced duties are the protection of the frontier "and the pursuit of dacoits. Such work is particularly detested, for the "men have to keep themselves supplied with food, or get their friends to "bring it to them, and this is not always an easy matter. Besides, such "service may last an indefinite time." *The Burman, his Life and Notions*, 1882, II, 262.

cultivator in a particular district. Thus in Perak one district used to supply the Raja with timber for building purposes, while rattans and other materials came from others; the people of one locality used to furnish the musicians for the Raja's band, while another had to provide nurses and attendants for his children.* Speaking of Kedah, Colonel Low says: "The "ryot was obliged also to pay for keeping up bands of music "and state elephants. His children were liable to be forcibly "taken from him—the girls for the seraglio, and the youths for "public works or for war, where they got no pay and but pre-"carious supplies of food."†

TENNENT describes "feudal service" as prevailing in its amplest details in the Eastern Province of Ceylon. "Accord-"ing to the custom of the country, the chief of the district "directs its cultivation by the villagers; they acknowledge his "authority, and, so long as they live on the land, devote their "whole time and labour to his service, receiving in return a "division of the grain, a share of the milk from his cattle, and "the certainty of support in periods of famine and distress. "Their houses, gardens and wells, though built, planted and "dug by themselves, are the property of the Chief, who alone "can dispose of them." * * *

"These serfs, whilst they live on the land, are bound to "perform every service for the lord of the soil, without pay; "they fence his gardens, cover his houses, carry his baggage, "perform the work of coolies in *balams* (canoes), fish for him, "act as his messengers; and when absent from his village, "they must provide food for himself and servants. They

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* "It would be in vain to pretend to render an account of all the *irregular* "*contributions* and *requisitions* to which a people are liable who labour under "the evils of a rude and arbitrary Government. At festivals, at marriages "and births, whether in the family of the Sovereign or of the Chief who "presides over them, the cultivators are called upon for contributions. In "the transportation of public property, or the conveyance of the minions of "the court or its officers, in the repair or construction of roads, bridges, "and other public works, the services of the people are exacted unmerci-"fully, and without thanks or reward." CRAWFURD—*Hist. Ind. Arch.*, III, 69.

† *Dissertation*, p. 7.

"may, in fact, be called his slaves, except that they are at "liberty to quit his service for that of another chief when "they choose. But as they seldom do change, it may safely "be presumed that they are contented with the arrangement, "and their healthy and pleasant faces sufficiently prove that "they are well-fed and happy." *

Forced service in a Malay State, too, is not merely the result of the application of the law of the stronger; it is well understood to be an incident of the lot of the cultivator of land, he acquiesces in it as one of the conditions on which he holds his fields, and he usually submits quietly to the orders of his superiors until they reach the pitch of oppression at which he decides that emigration is preferable to slavery. He knows that, by emigrating, he will forfeit his land, and in fact it is at once seized by the Penghulu and held for the Raja.

The cultivator may perhaps receive forgiveness and the restitution of his fields if he returns and submits at some later time, but he will probably have to pay a fine if he is known to possess the means of doing so.

No incident of native rule has contributed so much to swell the Malay population of Penang and Province Wellesley as this. Kedah has been half denuded of its inhabitants, and Patani, Perlis, Situl, Trang, etc., have contributed numbers of emigrants anxious to escape the unjust exactions of native rulers. But when the system is worked with justice and moderation, there are seldom complaints from the people. In the Krian district of Perak, the people (many of them British subjects), under the orders of the Orang Kaya Mantri, made roads and canals without murmuring, and in the same district, after its cession to the British Government, there was no difficulty in turning out nearly a thousand men in 1874, to commence clearing a line through the forest for a proposed road. †

The *kĕrah*, or forced levy of men for labour, is effected through the headmen of villages or districts. A Penghulu receives the orders of his Chief or Raja to have a certain number of men ready at a given time or place, and runs a risk of

* TENNENT'S *Ceylon*, II, 459.
† *Government Gazette*, Feb. 6th, 1875.

punishment or disgrace if he does not do so. He fines those who disobey, and takes money from those who are able to purchase exemption, so he contrives usually to make the incident profitable to himself. The cultivator who has to leave his house and his fields at this bidding, has to find his own tools and food, which may involve the carrying of a heavy load to the place of work, and a good deal of expense or privation. The abolition of the cultivator's liability for personal service in Java * was one of the facts which RAFFLES took into consideration in deciding what proportion of his crop the cultivator should pay to the State by way of land-revenue.† That enlightened administrator was very far from thinking that forced service, as one of the incidents of native tenure, was to be abolished simply, without any consideration given to Government for the concession. It was never for a moment doubted that the right of the Government to exact personal service from the cultivator was inherent in the system under which he held his lands, and the same holds good in Malay countries also. The right of a Malay Raja or Chief to order his feudal inferior to perform reasonable services is indisputable, and the surrender of such a right is a perfectly legitimate consideration for demanding an enhanced land revenue or other equivalent.

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* "The system of vassalage and forced deliveries has been abolished gene-
"rally throughout the Island." *Proclamation by Lieut.-Governor of Java, October 15th*, 1813.

† "On mature consideration, and the best advice within my reach, I con-
"ceived that a fair equivalent for them, including the acknowledged Govern-
"ment share of the crop, the amount paid in personal taxes and on the inter-
"nal trade, *and the value of forced services*, might be found, one district with
"another, in establishing the Government share, at about two-fifths of the
"rice-crop, leaving the second crop and the fruit-trees and gardens attached to
"the villages, free from assessment, the cultivator free from personal taxes,
"and the inland trade unrestricted and untaxed." RAFFLES' *Minute on Java*, 137.

"The peasant was subject to gross oppression and undefined exaction; our
"object was to remove his oppressor, and to limit demand to a fixed and rea-
"sonable rate of contribution. He was liable to restraints on the freedom of
"inland trade, to personal services and forced contingents: our object was to
"commute them all for a fixed and well-known contribution." *History of Java*, I, 154.

With the *kĕrah* system as practised in Malay States, it is interesting to compare the state of things which the English found in Java seventy years ago. A Dutch Commissioner, reporting on the province of Sourabaya in 1812, wrote as follows:—

"The feudal service was as grievous as almost all the other "charges united. The origin of those services must be sought "for in the feudal system of the native Government long ago "adopted throughout Java. It was considered that all the land "was the property of the prince, who only made provisional "assignments thereof to his subjects, in remuneration for mili- "tary and other services rendered. This was the cause of all "the lands being divided into as many allotments as could be "cultivated, called *cháchas*, each of a size to be cultivated by "one man. A certain number of these was assigned to the dif- "ferent chiefs, according to his rank; the custom of the country "fixing not only the amount of contributions to be paid from "the produce, but the number of men to be constantly kept in "attendance upon him. The lands thus assigned to chiefs were "exempt from service to them, and the inhabitants were only "expected to watch the villages, to make and repair the roads, "and to perform other general services of the State. This "was the situation of the people with regard to service, when "the coast districts were first ceded to the European Govern- "ment. The system of trade and fixed contributions did not "admit of any change, and the services were at that time of "very little consequence, and such as could be performed "without oppression to the inhabitants; but the case is now "quite different. Successively, and particularly of late years, "much heavier services have been demanded than were ever "before known, and it naturally follows, that the Javan must "be kept more at work than before. Besides, it is not possi- "ble to apportion those services equally, on account of the "situation of the places where the services are required, and "because the chiefs, who have the direction of the works, from "indifference or laziness, generally make a requisition on the "nearest village; and it not unfrequently happens, that many "people are thus taken for the public service, who have no lands "whatever allotted to them."

"Were the requisitions made for the public service alone, "it would still be comparatively nothing, it being admitted "that the State has a right to the labour of its subjects, but "the Regents, their relations, their *Patehs*, and the subordi- "nate Chiefs of every description, assume the right of disposing "of the services of the common people as they think proper, "and themselves employ many of them in menial labour of all "descriptions, from which it arises that the number of people "employed away from their houses on what is called public "services is almost incredible."

Forced labour is naturally hated by Malays and is evaded as much as possible. Travelling in the interior of Kedah, I have seen the Malay peasant running from his fields into the jungle at the sight of the Raja's elephants, lest he sould be called upon to form one of the train. In Perak, the establishment of British influence has led to a general "strike" on the part of the peasantry against the system to which they formerly submitted peacefully. A Malay Raja in Perak, who in 1876 was able to supply me with the men of two or three villages in order to convey the baggage and stores of a detachment of troops from Blanja to Kinta, now finds it difficult to procure men to pole his own boat without paying them. Men required to perform work for the Government of the State, as at present constituted, are scrupulously paid, or provided with ample rations. In Malacca, the *corvée* system has never been exercised under British rule, though it is, no doubt, an incident of native tenure, and, unless surrendered by Government for a money equivalent, might very reasonably be exacted for such purely local objects as repairing the dams and other native irrigation works which are necessary for the successful cultivation of the fields of a village or district,* building a *balei*

* Compulsory labour was formerly an institution in Ceylon also:—"Another "institution to the influence and operation of which the country was indebted "for the construction of the works which diffused plenty throughout every "region, was the system of *Raja-kariya*, by which the King had a right to "employ, for public purposes, the compulsory labour of the inhabitants. To "what extent this was capable of exaction, or under what safeguards it was "enforced in early times, does not appear from the historical books. But on "all occasions when tanks were to be formed or canals cut for irrigation, the "*Mahawanso* alludes almost in words of course—to the application of *Raja-* "*kariya* for their construction, the people being summoned to the task by "beat of drum." TENNENT'S *Ceylon*, I, 427.

or place of business for the use of the headman and elders of the village, keeping pathways clear of jungle, etc., etc.* But no words can be too strong to condemn the exactions of Malay Rajas, Chiefs and their followers in respect of the family and personal property of the cultivator, which may affect any of his possessions, from his daughter to the vegetables growing in his garden.† The goats, fowls, fruit, crops, etc., of the unfortunate peasant whose hut and land are on the route followed by a Raja on his journey, are, under a native Government, at the mercy of his rapacious followers; *gajah lalu orang buat layu,* "the elephant passes by, but men bring

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* So, in England, the oath of fealty is still an incident of the tenure of certain estates in land, though seldom or never exacted in practice.

† "The proprietors of the *pusakas* have also a claim to the services of the cultivators; a certain number of them are always in attendance at the houses "of their Chiefs, and on journeys are employed in carrying their persons and "baggage. The lands not *pusaka* used to pay the same proportion of produce "to the Sultan as the others did to the proprietors; but the cultivators of the "royal dominions laboured under greater disadvantages than the others. "Every Chief or favourite about Court had authority to employ them in the "most menial offices, and Chiefs possessing *pusakas* often spared their own "people, and employed the others. *Report on Bantam*—RAFFLES' *History of Java*, I, 150.

"It may be very desirable that I should mention a few of the oppressions "from which it is the object of the present system to relieve the people. I "cannot but consider the greatest of these—the extent of the personal service "demanded not only by the *Tumunggong* and his family, but the *Mantris* and "all the petty Chiefs, who had trains of followers that received no stipendiary "recompense. These added to the individuals employed in the coffee-planta-"tions (to which they appear peculiarly averse), in beating out rice for the "contingent, in cutting grass for and attending the *jayang sekars* (native "militia), post carriage and letter-carriers, may be calculated to have em-"ployed one-fifth of the male population of the working men. Another great "source of exaction was the large unwieldy establishment of *jayang sekars*, "and police officers; the former were liberally paid, the latter had no regular "emoluments. Both these classes, however, quartered themselves freely in "whatever part of the country their functions demanded their attendance. "This was equally the case with any of the Regent's family or petty Chiefs "who travelled for pleasure or on duty. Whatever was required for themselves "and their followers, was taken from the poor inhabitants who have now been "so long accustomed to such practices that they never dare to complain or to "remonstrate. The European authority did not escape the taint of corruption. "Monopolies, unpaid services, licences, forced or at least expected presents, "were but too common even in the best times, and must have contributed to "estrange the affections and respect of the natives from that power which "should have afforded them protection." *Report on Pasúruan—Id.*

a blight," is a significant saying in Perak and sufficiently denotes the effect of royal progresses from the villager's point of view. The practice of the Malay peasant, which must be well known to British officials who have worked in Malay districts, of bringing some simple offering, such as a fowl or two, or a basket of fruit or vegetables, when he presents himself before his superior with some request or application, has its origin in this custom. Such a present is expected in a State under native Government, and a man has small chance of a favourable hearing who comes empty-handed. It is satisfactory to observe the gradual disappearance of the practice of offering such presents, however trifling, for it is a testimony of the general acceptance by the people of the fact that, far from being expected or exacted, they are not even accepted under British administration.

Before quitting the subject of forced service, it may be useful to notice that Sir Stamford Raffles maintained the right of the renters of Government estates to require the cultivators to perform certain duties, but he stipulated that in such case they should be paid. The following paragraph occurs in his minute of June 14th, 1813 :—

"It will necessarily form a part of the arrangement to be "concluded, that the renters shall engage to keep the roads and "bridges in repair (with the exception of the great military "road) and also to furnish labourers, carriages, etc., when "required for the public service : but I propose that, on these "occasions, the persons so furnished be regularly paid for, at "the rate to be established in the leases of each district. This "arrangement is, indeed, absolutely necessary if it were only "to place in the hands of Government the means of checking "the employment of people, on the various pretexts of official "establishment, on the public service. At present there exists "no check ; and as the people so furnished by the Regents, "under the existing system, ought to be paid by a proportion of "land, it follows either that they are not paid for their labour, "or that the Regent is obliged to give up to them a portion of "that land, from which he would derive a revenue, and for which, "it is naturally to be expected, he will make a proportionate "exaction elsewhere. As the whole lands will now be rented

"indiscriminately, this fund ceases, and the additional land thus "to be rented, instead of furnishing a fund for the payment of "persons employed in the public service, will provide the source "of Revenue from whence such persons will be paid, while the "examination of the public disbursements will effectually pre- "vent unauthorised employment of individuals on the public "account."

In Java, it would appear from the following extract,* the Dutch Government proceeds on the principle of requiring that all labour which may be legally exacted should be paid for in full :—

"*Forced Labour.*—Besides the ordinary day labourers, the "landlord, whether Government or a private land-owner, is fur- "ther entitled to require the cottiers on his estate to work for "him as much as he pleases, but only on the condition of paying "each man the highest agricultural wages of the district. This "is the only real forced labour in Java, and the only point on "which the land-owner there has any but a strictly limited power "over the cottier peasantry on his estate. The labour rent† "extending all over the island causes no perceptible dissatisfac- "tion, but the forced labour beyond the one-tenth excites bitter "feelings if persisted in. Both the labour rent and the forced "labour are applied, on private estates, to the cultivation of "those crops which the landowner is growing on the spare land "for his own profit, except so much of the labour as is required "for the gardos, and for the maintenance of the roads near the "estate, both which the landlords have to keep up from the "labour rent."

"The cottier peasant is carefully guarded from extortion by "his landlord, but bound to pay his landlord's share of the pro- "duce of the land; his subordinate rights in his holding are "protected, but kept subject to his landlord's paramount right "to the soil; and he is practically freed from oppression, though "subject to have his labour utilized by his landlord. By these "means the cottier tenant's interests are secured, and he soon "becomes rich, from the large surplus produce of his holding "after paying his landlord's one-fifth. By the same provisions

* MONEY'S *Java*, II, 219.

† The obligation of the peasant to give one day's gratuitous work in seven.

"the land-owner is invested with sufficient power over his whole "estate to enable him to turn the remainder of his land to the "most profitable use it is fitted for. After having thus care- "fully regulated the respective rights of landlord and tenant, "the Dutch are wise enough to abstain from further interfer- "ence, beyond seeing that the legal conditions are fulfilled. If "a land-owner chooses to exact forced labour from his cottiers, "and thereby to create discontent among them, the Dutch "officials do not envenom this feeling by issuing injudicious "proclamations of abstract rights for the cottiers, or of remon- "strance with the land-owner. They take care that the land- "owner complies with the law, by paying the highest agricul- "tural wages for such forced labour, and they meet the peasant's "complaint by saying that the land-owner is only exercising his "right, in a manner of which he is sole judge, and that the cot- "tiers must either submit or withdraw from the estate."

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## Chapter VIII.

## TRANSFER BY SALE AND MORTGAGE.

"Land," says Marsden, "is so abundant in proportion to "the population, that they (the Malays of Sumatra) scarcely "consider it as the subject of right, any more than the elements "of air and water; excepting so far as in speculation the prince "lays claim to the whole. The ground, however, on which a "man plants or builds, with the consent of his neighbours, "becomes a species of nominal property, *and is transferable;**

* In Burma "all owners exercise the right of sale, lease, gift and mortgage, "though sale outright is very seldom made. There appears to be an objection "to it, which may almost be called religious, irrespective of the rights of "heirs, which cannot be alienated; and when land is sold by deed, it is gene- "rally expressed that the object of the purchaser is to build a pagoda or other "religious edifice thereon. This is supposed to justify the sale. Rice land is "occasionally let from year to year on verbal agreement, the tenant agreeing "to pay ten per cent. of the produce." Sir Arthur Phayre, before the So- ciety of Arts, May, 1881.

"but as it costs him nothing, beside his labour, it is only the "produce which is esteemed of value, and *the compensation he "receives is for this alone.* A temporary usufruct is accordingly "all that they attend to, *and the price, in case of sale, is "generally ascertained by the cocoa-nut, durian, and other fruit-"trees that have been planted on it;* the buildings being for the "most part, but little durable. Whilst any of these subsist, the "descendants of the planter may claim the ground, though it "has been for years abandoned. If they are cut down, he may "recover damages; but if they have disappeared in the course "of nature the land reverts to the public."*

"In Celebes, in Bali, and in that ill-peopled portion of "Java called the country of the Sundas, the cultivator is "invested with a *kind* of proprietary right. *By sufferance he "can bequeath, alienate, or mortgage his little tenement."*†

"Among them (the Sundanese), private property in the soil "is generally established; the cultivator can transmit his pos-"session to his children. *Among them it can be sub-divided "without any interference on the part of a superior; the posses-"sor can sell his interest in it to others, and transfer it by gift "or covenant.* He pays to his Chief a certain proportion of the "produce, in the same manner as the other inhabitants of "Java; because in a country without trade or manufactures, "labour or produce is the only shape in which he can contri-"bute to support the necessary establishments of the commu-"nity. So long as he advances this tribute, which is one-tenth "or one-fifth of the gross produce, he has an independent right "to the occupancy of his land and the enjoyment of the "remainder." * * * *

"The situation, however, of the cultivator in the Sunda "districts, who is a proprietor, is not much more eligible than "that of the tenant of the Government: he may, it is true, "alienate or transfer his lands, but while he retains them, he "is liable to imposts almost as great as they can bear; and "when he transfers them, he can therefore expect little for "surrendering to another the privilege of reaping from his

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* *History of Sumatra*, 244.

† CRAWFURD—*Hist. Ind. Arch.*, III, 53.

"own soil, what is only the average recompense of labour "expended on the estate of another."*

In the first of the above extracts, MARSDEN, with his usual accuracy, describes the chief incidents of the land tenure of the Malays, as they exist among the people of the Peninsula as well as among those of Sumatra; and it is subsequently shewn that among the Sundanese in the west of Java—a people who in their customs and language bear a much nearer resemblance to the Malays than do the people of any other part of Java—those incidents which have relation to the alienation of land are almost identical with those which obtain among the Malays. I am inclined to think that the superior permanency of the tenure of the Sundanese, when compared with that of the Javanese, is to be accounted for by a Malay origin, and that it is unnecessary to argue, with RAFFLES, that it is a mere survival in a remote district of a more liberal system, which once prevailed generally in the island, but which was destroyed by the rapacity of Muhammadan sovereigns. Malays, too, have had for centuries Muhammadan Rajas, not less given to encroachment upon the rights of individuals than those of Java; yet the Malay peasant has retained his proprietary right, and I believe that, both in Malay countries and in Sunda, this has been due to a national feeling or instinct on this subject, not to be found among the Javanese, who, under native rule, were serfs without proprietary interest in the land which they cultivated.

The power of alienation is one of the most important privileges connected with land that a land-holder can exercise, but it is only the result of an advanced and liberal recognition on the part of the governing power, of the rights of the subject. It must not be forgotten that, even in England, it was not until the Statute of *Quia emptores* was passed, in the reign of EDWARD I, that tenants in fee simple obtained the right of alienating their lands at their pleasure, and that the right of devising lands by will only dates from the reign of HENRY VIII. †

* RAFFLES—*History of Java*, I, 140.

† "We are too apt to forget that property in land as a transferable, mar-"ketable commodity, absolutely owned and passing from hand to hand like "any chattel, is not an ancient institution, but a modern development reach-"ed only in a few very advanced countries. In the greater part of the world,

It is not to be expected that among the Malays the system of alienation, or the effect of a transfer, should quite correspond with any European system, and it is necessary to be cautious in supposing that when land in a Malay State is said to have been bought or sold, the transaction has been similar to the purchase or sale of land in British territory, either in the mode in which it has been conducted, or in its practical operation. CRAWFURD, it will have been noticed, says that the Sundanese cultivator is allowed to alienate his land "by sufferance;" and MARSDEN points out that the usufruct is all that a Malay has and all that he can dispose of.

When Captain Low, in describing land tenure in Kedah, says that land granted by the Raja "could not be alienated" * it must not be supposed that the right of occupancy could not in general be the subject of a bargain there. Captain Low quotes extracts from the *Undang-Undang Kedah* (Laws of Kedah) in which occur the two following sections :—

"When a garden is to be sold, the trees are to be estimated "at ¼ of a dollar each and the amount will be the price of the "land."

"What the Raja has given no one can take away, nor can "any one sell land so given *without the Raja's concurrence.*" †

The first of these rules exactly coincides with what MARSDEN describes, as regards the interest in the land which passes by sale in Sumatra, and with RAFFLES' estimate of what the Sundanese peasant has a right to expect on the surrender of his

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"the right of cultivating particular portions of the earth is rather a privi-"lege than a property—a privilege first of the whole people, then of a parti-"cular tribe or a particular village community, and finally of particular "individual of the community." Sir GEORGE CAMPBELL *on Indian Land "Tenures (Cobden Club Papers).*

* See *supra*, p. 79.

† "Powerful as the *Zamíndár* became in managing the land, in grasping and "in ousting, he had no power (in Bengal before 1793) of alienating his "estate; he could not raise money on it by mortgage, nor sell the whole or "any part of it. This clearly appears from a proclamation issued on 1st "August, 1786; the illegal practice of 'alienating revenue lands' is complained "of; 'the gentlemen appointed to superintend' the various districts are "invited zealously to prevent the 'commission of the offence;' and the *Za-"míndár, Chaudhari, Taluqdár*, or other land-holder who disobeys, is threatened "with dispossession from his lands." *Land Revenue and Land Tenures of India.*—BADEN-POWELL, p. 221.

proprietary right to a transferee. It may be clearly laid down that the Malay cultivator can transfer only the interest in the land which he himself possesses; that that interest, as already shewn, is merely a permanent and inheritable right of occupation, conditional on the continuous occupation of the land on the payment of tenths and taxes, and on the rendering of certain customary services; and that the price to be paid has no reference to the value of the land itself (for, in a primitive state of society, that has little intrinsic value), but is calculated, if garden land, by estimating the value of the fruit-trees, or, if *padi* land, by assessing at a reasonable sum the probable value of the labour bestowed by the first cultivator in clearing the forest and bringing the field into cultivation.

I have had opportunities of observing the Malay customs relating to the sale and mortgage of land in operation in purely native districts, having been deputed in 1874 to take over the territory on the left bank of the Krian river, then recently ceded by Perak to the British Government, and having since then served for some years as Assistant Resident in the Native State of Perak. I am, therefore, able to speak with some confidence upon the laws and customs which have come under my personal observation in actual practice.

The technical term used in Perak for the transfer of land by sale is *pulang bĕlanja* (return of expenses), which sufficiently indicates that the money paid is not a price set upon the land itself, but the recoupment of the outlay incurred by the vendor in bringing it into cultivation. The new proprietor, in fact, does not buy the land; he simply buys out the occupier by compensating him for his labour, that being the factor which originally created the tenancy, and thus obtains the right to stand in his place. It is manifest that he will not pay a long price for a mere right of occupancy weighted by the incidents and liabilities above described; in Krian, in 1874, it was difficult to get ten dollars an *orlong* for excellent *padi* land by *pulang bĕlanja*, but when security of tenure and the full right of alienation of the soil were introduced in the district by the British Government, it became possible to sell the same land for $60 or $70 an *orlong*.

So in the case of land on which fruit-trees are growing.

Not long after the Pêrak war it became necessary to acquire the piece of land at Kuala Kangsa, in Perak, on which the British Residency now stands. The bargain was effected in strict accordance with Malay law, and the sum which was paid was calculated as the value of the fruit-trees and houses standing on the land. It was clearly understood on both sides that the soil was vested in the State, and that all that the proprietor could dispose of was the proprietary right; the transaction was strictly one of *pulang bĕlanja*. Speaking of this purchase to Raja Muda Yusuf at Sayong soon afterwards, I was asked by him in a pointed manner whether the late proprietor had sold me *the land*; the explanation that the proprietor had merely been compensated for her interest in the land, namely, her trees and houses, quite satisfied him and others that Malay custom had been observed, and that the rights of the Raja or State had not been invaded by an undue claim, on the part of a subject, to the soil. This principle has always been recognised in all sales of land in Malay districts in Perak which have come under my notice. But the Malay cultivator is always ready to claim from British officers, whom he may think likely to be ignorant of the real conditions of native land tenure, a larger interest than Malay law gives him, in fact, as large an interest as can be conceded. The official who hears the words "sell" (*jual*) and "*buy*" (*bĕli*) used in connection with the transfer of land under native tenure, is apt to conclude that a title to the soil has been passed by the transaction, and he very possibly recognises, or allows to be recognised in a general way, this view of the matter, and so people get to believe, or are allowed to assert, that their position in respect to the State is something quite different from what it really is. This, though it may cause embarrasment in administering the land-revenue of a district, cannot, of course, affect the legal status of the cultivator, for ignorant administration of the law does not alter the law itself. Nothing can be more certain than the fact that no subject in a Malay State can lawfully claim to hold any property in land approaching our freehold or fee simple tenure.

As the Malay *pulang bĕlanja* differs widely from our idea of a sale of land, so the *jual janji* (conditional sale), the only

form of hypothecation of land known to Malay law, is, in its principal incidents, quite unlike our mortgage of real property. *

The Malay who raises money on his holding by the transaction called *jual janji*, sells his proprietary right for a sum then and there advanced to him, and surrenders the land to the vendee, coupling, however, the transfer with the condition that if, at any time, or within a certain time, he shall repay to the vendee the sum so advanced, he (the vendor) shall be entitled to take back his land. This transaction differs from our mortgage in the facts:—(1) that no property in the soil passes, but merely the proprietary right; (2) that possession is actually given to the person who advances the money.

It frequently happens that the conditional vendor (the debtor) wishes to retain possession of the land during the period of his indebtedness, and, if so, this is arranged by his becoming the tenant of the conditional vendee (the creditor). The rent in money or kind which he pays, or which some other tenant pays if the land is not let to the conditional vendor, or the profit which the conditional vendee derives from cultivating the land himself if he does not let it, takes the place of interest, which is not charged, usury being condemned by Muhammadan law.

If a term is mentioned within which the money must be repaid, and the condition of repayment is not fulfilled within the appointed period, the sale becomes absolute (*putus*) and the vendee takes the full rights of proprietorship. But even

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* In China, "a mortgagee must actually enter into possession of the property and make himself personally responsible for the payment of the taxes, "before his mortgage is valid: unless explicitly stated, the land can be redeemed at any time within thirty years on payment of the original sum. "Secs. 90 to 100 of the Code contain the laws relating to this subject, some "of which bear a resemblance to those established among the Hebrews and "intended to secure a similar object of retaining the land in the same class "or tribe."—*The Middle Kingdom*, WILLIAMS, II, 100.

"Land under Burman rule was never sold in the usual acceptation of the "term. It was frequently conveyed for a price from one person to another, "and though the transaction was styled a sale, and not a mortgage, it was fully "understood that the vendor retained a right to repurchase the land at "any time he liked, and that the emptor could not re-sell the land without "the consent of the original vendor."—*British Burma Gazetteer*, Vol. I, p. 438

then the payment of the money at some later time would, in most cases, be sufficient to enable the conditional vendor to regain his land from a stranger under purely native rule. If no term is fixed, the money may be paid at any time, but until it is paid, the conditional vendee is entitled to retain possession of the land and to cultivate it, or let it, at his pleasure. A short document is generally drawn up in evidence of the transaction, but these are often so loosely or informally worded that the proof of the existence of the condition rests principally upon the good faith of the parties. Sometimes there is no written agreement at all.

Transactions of this nature necessarily led to the investigations of many disputed claims when the rights of the native land-holders in Krian were being settled (see *supra*, p. 121). The rise in the value of land occasioned by the establishment of British rule resulted in a general rush for possession, men who had long since sold their fields by *pulang bĕlanja* coming forward to declare that the sale was merely conditional, while in other instances conditional vendees in possession were equally ready to declare that the transaction which gave them their right was *jual putus*, an absolute sale, not *jual janji*, a conditional one.

The native laws contain some curious provisions on the subject of hypothecation, a specimen of which relating to real property may be consulted in the Appendix, p. xv. In all, the peculiar principle of the Malay mortgage, namely, the handing over to the creditor of the property on which the money is advanced, is fully recognised.

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## Chapter VIII.

## INHERITANCE.

Among the Malays, the distribution of the property of deceased persons is governed either by Muhammadan law, or by national custom, or partly by one and partly by the other,

*e.g.*, the real property by customary law and the personal property by Muhammadan law.

There are Malay treatises on the Muhammadan law of inheritance *(faraiz *)*, in accordance with the rules of which it is common to apportion the estate of an intestate. But there are reasons which often make it clear to the Malay mind that land is a species of property, the transmission of which should be in accordance with the national customary law (*hukum ʻadat*) rather than with that of the Koran (*hukum sharʻa*). For instance, the wife of a Malay cultivator will generally share in the toil of cultivation; indeed the planting and reaping of paddy is performed almost entirely by women, although the ploughing and harrowing fall to the lot of the men. In respect, therefore, of the crop, which is harvested as the result of these joint labours, the husband and wife are co-partners (*sharikat*) and this is often the case with regard to the land itself. Under such circumstances, in case of the death of the husband, it would be manifestly unjust to distribute the joint property as his estate under Muhammadan law. The joint property must be equally divided, and the share of the wife having been allotted to her, the share of the deceased husband may, if desired, be distributed in accordance with the Muhammadan law of inheritance. This is only the rightful due of the wife, who, properly speaking, is entitled to be maintained by her husband in a manner befitting his station in life without performing any labour.

I think that it will be generally found that, in the Malay States, the property of the trading class—goods, merchandise, shops, ships, &c.—are distributed according to Muhammadan law, while the agricultural class cling with tenacity to their old customs, and insist that their lands at least, and often the whole of their property, shall descend in accordance with the old Malay law which has come down to them from their forefathers.

This customary law varies very much according to locality, individual States having often regulations peculiar to them alone.

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* فرايض, plural of فريضه, from فرض to cut. (Arabic.)

Crawfurd mentions the subject very briefly:—"Where "there is a right of private property in land, or at least the "usufruct of it, there is generally a community of goods "among the members of a family. It is held in the name of "the father or elder male of the family, and hence, by the "customs of the greater number of the tribes, the father, or "nearest of kin, is answerable for the debts of all the mem- "bers of a family. I can nowhere discover in any of the "collections of native laws which have fallen into my hands, "that the right of devising property by will had any existence "among the tribes of the Indian Islands."*

This recognition of a superior right in the eldest male of a family and the tendency of the Malays to confine the right of succession to land to the tribe to which the deceased owner belonged, is found in the law of the Chinese also: "The "paternal estate and the houses upon it descend to the "eldest son, but his brothers can remain upon it with their "families, and devise their portion *in perpetuo* to their chil- "dren, or an amicable composition can be made; daughters "never inherit, nor can an adopted son of another clan suc- "ceed." †

Marsden, writing of the law of inheritance among the people of Pasummah in Sumatra, says:—

"If a person dies having children, these inherit his effects "in equal portions and become answerable for the debts of the "deceased. If any of his brothers survive, they may be per- "mitted to share with their nephews, but rather as a matter "of courtesy than right and only when the effects of the "deceased devolved to him from his father or grandfather. If "he was a *man of rank*, it is common for the son who succeeds "him in title to have a larger share. This succession is not "confined to the eldest born, but depends much on *private* "*agreement in the family*. If the deceased person leaves no "kindred behind him, the tribe to which he belonged shall "inherit his effects and be answerable for his debts." ‡

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* Crawfurd—*Hist. Ind. Arch.*, III, 98.
† Williams—*The Middle Kingdom*, II, 100.
‡ *Hist. of Sumatra*, p. 230, (3rd Ed.).

According to the Menangkabau law of inheritance, the nephew on the sister's side becomes heir to his uncle's property to the exclusion of the son of the latter. The tradition which accounts for this singular regulation is to be found in Newbold's work on the Straits of Malacca, vol. II, p. 221. A similar custom prevails in the Eastern Province of Ceylon and in parts of India, and there is a Sinhalese legend, not unlike the Malay one, explanatory of its origin.* This custom is still observed in the district of Naning in the interior of Malacca, and in Rambau, Sungei Ujong and the Negri Sambilan.

The Perak custom differs from this. In that State the lands and houses of the deceased descend to his daughters equally, while the sons divide the personal property. The latter are supposed to be able to create landed estates for themselves, by clearing and planting land which they may select, or, at all events, to obtain the use of land by marrying women who may have inherited it.

However, the more active of the Muhammadan priests and mosque officials, especially if they be foreigners and not Perak Malays, endeavour, as far as they can, to get the Muhammadan law of inheritance adopted, to the exclusion of the local custom. The older men are more conservative. From information supplied by an old Imam up the country, I learn that the principle of distribution practised in his district is as follows:—

"If a man dies without children, leaving a widow, his property is divided between her and the *waris* of the deceased. "If he leaves a wife and children, the property is, in the first "instance, divided into two equal shares, one of which goes to "the *waris* of the deceased and the other is again sub-divided "into four parts, one of which (one-eighth of the whole) "goes to the widow and the other three (three-eighths) are "divided among the children."

"If there are children of both sexes, the three-eighths above-"mentioned are divided into four portions, of which three go

* Tennent's *Ceylon*, II, 458.

" to the son or sons, and the remaining one to the daughter or " daughters."

It will be apparent that there is very little genuine Muhammadan law in all this. Under that system, the widow does not get a half under any circumstances. It is not clear who are the *waris,* or heirs, who take one-half of an estate to the exclusion of the widow and children. Perhaps it is meant that one-half is set apart in the first place to meet funeral expenses and the claims of persons entitled to share under Muhammadan law, among whom the children would be included. The same authority has supplied me with the following note on the customary law of inheritance practised in parts of Perak :—

" Upon the death of a man possessed of property, his plan- " tations, houses and *padi*-fields go to his daughters, while his " other property, such as cattle, buffaloes, goats, elephants, " &c., are divided into four shares : three of these go to the " sons and the fourth is devoted to the cost of the funeral " feasts. If there is no land or house, the daughters share in " the personal property equally with the sons."

" If a woman who has inherited land or house property " marries and then dies without leaving a child, the property " goes to her *waris* and not to her husband. If she leaves " issue, the inheritance goes to the child or children."

" Property which has been acquired by the joint earnings " of the husband and wife must, upon the death of either of " them, be divided. The funeral expenses must be deducted " before division. The remainder must be divided equally in " two shares, one of which goes to the survivor and the other " to the children or *waris* of the deceased."

" The shares of infant children are held in trust for them by " the *waris* of a deceased parent, until they come of age."

The descent of landed property in Perak to the female issue and its restitution to the family if an heiress dies childless, illustrate in a striking manner the tribal instinct of the Malays and the tendency to keep property in a particular family, group or tribe.

Even the wild tribes of the Peninsula have their rules of inheritance. Favre, writing of the Jakuns, says : " After the

"death of parents the whole of their property will be divided "amongst all the children in equal parts." *

In Siam, according to Colonel Low, † "the property of an "intestate person, should he leave no legal heirs, escheats to "the King, who generally contrvies to get a portion of the "estate of every person deceased. Wills are written or made "verbally, in the presence of competent witnesses; and may "not be confounded with alienation by gift. Real and per-"sonal property may be willed and gifted away to any one, "and, as hereditaments, descend to, and are without distinc-"tion divided amongst, the heirs at law. The laws of inheri-"tance are considered as applying *chiefly* to heads of families. "Under this view, the property of a man deceased is divided "into three portions. One goes to the parents and grand "parents, one to the widow, and the third to the children "and other relations on the man's side according to priority. "But should the man not have cohabited so long as three "years with his wife, she will only receive one-third of a por-"tion or part."

"The distribution of the property takes effect after the "solemnization of the obsequies; and should a claimant, "having the power and opportunity so to do, neglect to put "in his claim previous to the termination of the obsequies, he "forfeits his right."

"A person claiming inheritance must personally appear; "substitutes being inadmissible. Heirs to property must "assist at and bear their share of the charge for obsequies, "exceptions being made for those who cannot, from the nature "of circumstances, be present."

"Before property is divided, the debts of the deceased are "to be punctually paid, and competent witnesses must be pre-"sent at the division. It does not appear that any distinction "is drawn betwixt property of which a female may be pos-"sessed, and that left by a man: both are divided on similar "principles. The eldest child, whether male or female, gets "the largest share. Should the individual have no parents,

* *Journ. Ind. Arch.*, II, 269.
† *Id.*, I, 344.

"grandparents or great-grandparents living, then the portion, "or one-third of the real and personal property which such "persons would have otherwise taken is divided equally and "added to the two remaining portions, the form of first sepa- "rating the estate into three parts being always adhered to. "The same principle regulates the division where there are no "claimants to either of the other two shares."

With this description, and with the customs of the Malays as to succession, it is interesting to compare the laws of another Indo-Chinese kingdom—Cambodia. I take the following account from a recent French work :—*

"Property in land does not exist in Cambodia, for, as is "well known, the State is the absolute proprietor of the soil. "Nevertheless, the enjoyment of lands is left to those who "clear them and employ them for some specific cultivation, "rice in particular. It happens also, sometimes, that the first "occupiers are dispossessed without a word of warning, with- "out the excuse of public interest and simply in order that "some one may help himself to a field quite fit for cultiva- "tion."

"The fortune of a Cambodian is composed of moveable and "immoveable property, land excepted. Generally speak- "ing, even the richest have not much money, but they own "boats, elephants, horses, cattle, buffaloes, which they hire "out; they have sometimes a large number of slaves whom "they employ at home either on the products which they cul- "tivate or in all kinds of commercial and industrial underta- "kings. Money is lent out at high rates of interest, but it is "liable to catastrophes."

"The goods of a Cambodian who dies a widower and with- "out children, go all to the State, that is to the King. If he "leaves daughters only, the Government takes half of the "property and divides the other half among them. If they "are of tender age, the goods are deposited with their grand- "father who becomes their guardian."

"When the Government is a creditor of the deceased, the "King causes the whole of the debt to be exacted first of all

* MOURA—*Le Royaume de Cambodge*, I, 347.

" from the assets, and the balance, if any, is divided among the heirs."

"When the head of a family dies leaving several wives " and several children, the child or children by whom he has " been more exclusively nursed during his illness share the " fortune according to the rank of their mother. For this " purpose, the property is divided into seven parts; out of " these, the son of the third wife has one, that of the second " wife two, and that of the first, four. If these ladies have " several children, the distribution is made, all the same, " according to the proportion just mentioned. Children who " are absent at the time of the sickness and death of their " father lose a portion of their rights to the inheritance."

"If there are no children, the first wife keeps all the goods " and the family remains united. Were the second and third " wife to wish to leave the house before the conclusion of the " mourning, that is to say, within three years, they would have " the right to do so, but on the condition of renouncing their " share of the inheritance. After the three years, if the " widows separate, the property is divided among them accord- " ing to the rule laid down for their children, when they have " any, that is to say, the first has four shares, the second, two " and the third, one."

"The widows of the same husband may marry again after " three years of mourning; the second and third have not " got to pay anything to the State for this, but the first wife, " if she marry again and be without children by her first hus- " band, must first surrender half of her fortune for the benefit " of the royal treasury. If she does not marry again the " Government takes the whole at her death."

"An adopted son renounces the right of inheriting from " his real parents and cannot be sued for debts which they " may have contracted in their lifetime. If the head of a " family, after having adopted a child, becomes himself the " father of a legitimate child, the adopted son does not lose " all hope of inheriting, for the law gives him equal rights " with the children of the full blood."

"Children, who, at the time of the death of their father, " are in the special service of the King, have a right to three " and a half shares of the inheritance."

"In case a husband, on account of the barrenness of his "first wife, marries another who bears him a son, this latter "is the sole heir of his father and he provides, after the death "of the latter, for the support of the first widow and his own "mother."

"The law of the Hindus sanctions similarly the right of "the eldest son to the greater part of the patrimony of the "father and mother. 'The eldest of the family,' says the "law, 'if he be virtuous, may take possession of the whole of "his patrimony of the father and mother, and the other "brothers must live under his guardianship as they live under "that of their father.'"

"Generally, in India, distribution used to be made in the "following way: the eldest had a double share, the second a "share and a half, and the other brothers a single share res- "pectively. The brothers gave to their sisters by the same "mother a quarter of their shares to help them to establish "themselves."

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## Chapter IX.

## NATIVE TENURE UNDER EUROPEAN RULE. INDIA, BURMA, JAVA, CEYLON.

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### INDIA.

A wholesale modification of the systems of land tenure of ancient and highly civilised communities in British India by the introduction of English law would obviously have been unwise. It has always been the object of British Administrators in that country to recognise native laws and customs relating to the tenure of land, and, in elaborating Revenue systems, to secure that the regulations laid down shall give due effect to every class of interest in land known to native laws. It has been gradually ascertained in the various pro-

vinces what are the different degrees of right of occupants and proprietors and each interest has received definition in the Land Acts passed from time to time for particular provinces, divisions or districts. In such Acts, the terminology used in describing tenures, classes of proprietors, and occupants, documents evidencing title, and rents and other payments, is largely borrowed from the native languages. The use of terms which have a technical meaning in English law is thus avoided.

Speaking generally, the *raʿiyat* is the owner of his holding, subject to the payment of the assessed land revenue. No documentary evidence of title is necessary, though in some provinces he holds a *patta*, or official statement of the facts of his holding or assessment. His rights are alienable and heritable, but all transfers have to be registered.

Revenue systems vary in different parts of India; there are practically two. The first contemplates settlement with a middleman; and the second, dealing with the individual cultivator direct—( the *raʿiyat-wári* system ). The Government may, in point of fact, either deal with a whole village at once through representative headmen, or may make a settlement of each individual holding.

In the latter case the settlement of a district is based upon a survey, the soil of every field is classified with a view to ascertaining the proper rate of assessment to be imposed, and eventually settlement records are made up, which include a register shewing the name of the occupant of every surveyed allotment.

In such a system, there is no place for English documents of title, and the tenure is none the less certain and secure because it is not supported by parchment and sealing-wax. The *raʿiyat's* name is down in the register of the village to which he belongs, and the extent of his land and the annual assessment which he has to pay are there recorded. The village records and the evidence of the headmen and villagers are at hand to support him if his right of occupancy is impugned.

"In Bombay (just as in Madras) the occupant holds on "the simple terms of paying the revenue; if he admits that "he is (or is proved by a decree of a Court to be) holding

"on behalf of some one else, as a tenant, or in an inferior "position, then the 'superior holder's' name is entered in "the register, not his: he becomes the 'inferior holder,' and "it is the superior who is entered in the register as the 'occu-"pant' responsible for the assessed sum. Any one who is "recorded as the responsible holder can simply resign (if he "does not like to pay the assessment) any field in his holding. "The assessment is fixed for a period of thirty years, so that "a man who elects to hold continuously, knows for certain "that during that long period, *all* the profit he can make will "go to him."

"At the beginning of each year, he can signify to the "*mámlatdár* (or local revenue officer of a *taluk* sub-division) "what fields he wishes to hold, and what he wishes to give up; "as long as he does this in proper time, he is free to do as he "pleases. If he relinquishes, the fields are available for any "one else; if no one applies for them, they are usually auc-"tioned as fallow (for the right of grazing) for the year, and so "on, till some one offers to take them up for cultivation. "Nothing whatever is said in the Revenue Code about the "person in possession (on his own account) being 'owner' "in the western sense. He is simply called the 'occupant,' "and the Code says what he can do and what he cannot. The "occupant may do anything he pleases to *improve* the land, "but may not, without permission, do anything which diverts "the holding from agricultural purposes. He has no right to "mines or minerals."

"These are the facts of the tenure; you may theorise on "them as you please; you may say this amounts to propriе-"torship, or this is a *dominium minus plenum*, or anything "else."

"The question of tenancy is just as simply dealt with. I "have stated that, if it appears that the occupant is in pos-"session in behalf of some one else, that some one else is "recorded as the 'superior holder,' and he becomes the "'inferior holder.'"

"What sort of 'inferior'—whether a tenant or on some "other terms—is a simple question of fact and of the agree-"ment or the custom by which he holds."

"If an occupant dies, one (the eldest or responsible) heir "must be entered as the succeeding occupant who has to pay "the revenue, for there can only be one registered revenue-"payer for each field with a separate survey number, though, "of course, there may be several sharers (joint heirs of the "deceased owner, for instance) in a number. Which of them "is so entered, depends, of course, on consent, or on the result "of a Court decree, if there is a dispute."

"Sharers can always get their shares partitioned and assess-"ed separately, as long as there is no dispute as to what the "shares are." *

The advantages enjoyed by the occupant of land under the survey settlement are :—

1*st*.—Fixity of tenure conditional on the due payment of the Government demand.

2*ndly*.—His occupation is heritable and transferable by gift, sale, or mortgage, without other restriction than the requirement to give notice to the authorities.

3*rdly*.—His assessment is fixed, but subject to revision after periods of thirty years. The right of occupancy is not affected by the expiration of a term of settlement, being conditional solely on the payment of the assessment imposed.

4*thly*.—He is at liberty to resign his entire occupancy, or any recognised share or part of it defined by the survey in any year, provided notice be given by a fixed date. If waste land be available, he may enlarge his holding at pleasure on application to the district officials.

5*thly*.—He may sub-let his lands, and Government will assist him, under certain limitations, in recovering rents from his tenants.

6*thly*.—His holding cannot be encroached on by his neighbour, every sub-division of it being clearly defined by boundary marks, and susceptible of immediate identification by means of the village maps and registers. Further, the fact of his possession of any field or sub-division of it can be traced without difficulty in the village records year by year up

* BADEN-POWELL—*Land Revenue and Land Tenure in India*, 136-8.

to the date of the introduction of the first survey settlement. Thus the chances of dispute and litigation are entirely removed, or reduced to a minimum. Subject, then, to the part of the Government assessment, the occupant of land under the survey tenure may be said to enjoy every right of property that he can desire, with the advantage of possessing a title the most simple and complete that can be imagined.*

## BRITISH BURMA.

The rights of the land-holder, subject to the revenue demands of Government, have been just as carefully guarded in British Burma. The Land Act of that province (Act II of 1876) is founded upon earlier local regulations, which were themselves an epitome, more or less, of the laws and customs of the Burmese as to tenure of land. The land-holder in Burma has, like the *ra'iyat* in Malacca, a proprietary right, but in the case of the former, this right is inchoate until there have been twelve years' continuous possession; whereas in the case of the Malay mere appropriation and possession create the right at once, provided that clearing and cultivation are undertaken.

In British Burma, "if a person (not holding under a grant "or order of Government which itself determines the extent "of right) has continuously held *possession* of any culturable "land for twelve years, and has continuously paid the revenue "due thereon, or held it exempt on express grant, he is allow-"ed to have acquired a permanent heritable and transferable "title. It will not, however, do for a man to be able to assert "former or ancient possession if that possession came to an "end twelve years before the Act came into force (1st Fe-"bruary, 1879). Possession, on the other hand, is not broken "by a succession or transfer. If *A* has held for seven years, "and then sells to *B*, who has held for five, *B* can put in a "twelve years' possession. So if *B* has inherited from *A*. In "the same way as regards the condition of paying the revenue. "The payment will hold good if it has been made by a tenant

* *Bombay Administration Report*, 1882-3, p. 32.

"or other person holding under the person in possession. The "land-holder's right is not *called* proprietary, because it is "restricted not only by the duty of paying revenue, taxes, and "cesses, which is a restriction on all property in land in India, "but also by the fact that all mines and mineral products and "buried treasure are reserved to Government, as also the right "to work or search for those products on paying compensation "for the surface damage."

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"Any 'land-holder' can obtain an authoritative declara- "tion that he is such, by applying to have his right recorded "on a register provided for the purpose, and getting a certi- "ficate of the record. There are, of course, provisions in the "Act regarding the cancelment and calling in question of such "record." *

## JAVA.

It has already been stated that, under native rule, the Javanese were mere serfs, without proprietary interest in the land which they cultivated. Under Dutch rule, prior to the conquest of Java by the English in 1811, no proprietary tenure was introduced, and the native system remained unmodified if the following description given by RAFFLES is a correct one :—

"The Dutch Company, actuated solely by the spirit of gain, "and viewing their Javan subjects with less regard or consi- "deration than a West Indian planter formerly viewed the "gang upon his estate, because the latter had paid the pur- "chase money of human property which the other had not, "employed all the pre-existing machinery of despotism, to "squeeze from the people their utmost mite of contribution, "the last dregs of their labour, and thus aggravated the evils "of a capricious and semi-barbarous government by working "it with all the practised ingenuity of politicians, and all the "monopolising selfishness of traders." †

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* BADEN-POWELL—*Land Revenue and Land Tenure in India*, 700-702.
† *History of Java*, I, 168, (2nd edition).

Security of tenure and protection from unjust exactions are the desiderata indicated in the eloquent passage which follows, written with all the burning indignation with which RAFFLES avowed the tyranny and rapacity of the Dutch Colonial Officials of those days inspired him :—*

"Can it, therefore, be a subject of surprise, that the arts of "agriculture and the improvement of society have made no "greater advances in Java? Need it excite wonder that the "implements of husbandry are simple; that the cultivation is "unskilful and inartificial; that the state of the roads, where "European convenience is not consulted, is bad; that the "natural advantages of the country are neglected; that so "little enterprise is displayed or capital employed; that the "peasant's cottage is mean, and that so little wealth and know-"ledge are among the agricultural population; when it is "considered that the occupant of land enjoys no security for "reaping the fruits of his industry; when his possession is "liable to be taken away from him every season, or to suffer "each an enhancement of rent as will drive him from it; when "such a small quantity of land only is allowed him as will "yield him bare subsistence, and every ear of grain that can be "spared from the supply of his immediate wants, is extorted "from him in the shape of tribute; when his personal ser-"vices are required unpaid for, in the train of luxury or in the "culture of articles of monopoly; and when in addition to "all these discouragements, he is subject to other heavy im-"posts and impolitic restraints? No man will exert himself, "when acting for another, with so much zeal as when stimu-"lated by his own immediate interest; and under a system of "government, where everything but the bare means of sub-"sistence is liable to be seized, nothing but the bare means of "subsistence will be sought to be attained." †

* "It is but right, however, to say that the Dutch, while admitting their old Colonial rule to have been most objectionable in many ways, deny the systematic atrocities imputed to them by RAFFLES and CRAWFURD, both of whom, the Dutch say, distorted the facts and working of their old Colonial Government, which was only known to these authors by hearsay." MONEY'S *Java*, I, 57, citing TEMMINCK'S *Coup d'œil général sur les Possessions Néerlandaises dans l'Inde Archipelagique*, *I*, 13.

† RAFFLES—*Hist. of Java*, *Id.*

To transmute the serf into a proprietor, and to give him immunity from forced labour and other exactions, was the task which RAFFLES set himself. To use his own words: "The "foundation of the amended system was, 1st—The entire "abolition of forced deliveries at inadequate rates, and of all "feudal services, with the establishment of a perfect freedom "in cultivation and trade; 2nd—The assumption, on the "part of Government, of the immediate superintendence of "the lands with the collection of the resources and rents there-"of; 3rd—The renting out of the lands so assumed to the "actual occupants, in large or small estates, according to local "circumstances, on leases for a moderate term. In the course "of the following years (1814 and 1815) these measures were "carried into execution in most of the districts under our "Government, with a view to the eventual establishment of a "perpetual settlement, on the principle of the *ryotwar* "or as it has been termed in Java, the *tiáng-álit* system."

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"In the first settlement, leases were only granted for a year, "or, at the utmost, three years, and were given to intermedi-"ate renters; but in the more detailed settlement of 1814, "after sufficient information had been collected on the state "of the country, Government determined to act directly with "the individual cultivator and to lay the foundation of a per-"manent system. By this latter period, the experiments had "been tried to a certain extent, and had succeeded beyond the "most sanguine expectation. Difficulties met us in the way, "but they were by no means insurmountable: there were at "first imperfections in the system, but they did not affect its "principle, and were easily removed. By the zeal, the ability, "and industry of the various officers entrusted with the exe-"cution of the duty, whatever was practicable in furtherance "of the object in which they felt deeply interested, was accom-"plished. In the course of the years 1814 and 1815, the new "system was introduced into Bantam, Cheribon and the "eastern districts, over a population of a million and a half of "cultivators, not only without disturbance and opposition, but "to the satisfaction of all classes of the natives, and to the "manifest increase of the public revenue derivable from land."

RAFFLES' system was the *ra'iyat-wári* system of Bengal; a proprietary right was accorded to the cultivator, and a temporary settlement was arrived at with him as to the amount of assessment payable by him in lieu of the miscellaneous liabilities of former times. The assessment was payable in money or kind (grain). It was intended that this should be a stepping-stone to a permanent settlement, when experience should have shewn the justice or otherwise of the scale first determined upon. This was :—

For *sawah* lands (rice-fields).

1st quality of soil, one-half of the estimated produce.
2nd quality of soil, two-fifths of the estimated produce.
3rd quality of soil, one-third of the estimated produce.

For *tegal* lands (maize, &c.).

1st quality of soil, two-fifths of the estimated produce.
2nd quality of soil, one-third of the estimated produce.
3rd quality of soil, one-fourth of the estimated produce.

Chiefs and headmen of villages were continued in office as Collectors of Revenue. Individual rights were recorded in a document, kept for inspection in every village office, in which the name of every land-holder in the village and the amount of his assessment were to be found.

About the year 1818, two years after the restoration of Java to the Dutch, RAFFLES' experiment was abandoned as unsuccessful, and the Government of Netherlands India went back to the system of settlement with the village for the whole village lands. "The yearly allotment of lands was "then left to be made as before, and the legal fiction of the "separate property of each village in certain specified fields "was abolished."

The present system of land-tenure in Java, which is founded on the native customary law, is thus explained by Mr. MONEY :—*

"*Old Land Tenure and Rent under Native Rule.*—The old "idea under the Native rule was, that the land belonged to "the prince, the usufruct of it to the cultivator. The price of

* MONEY'S *Java*, I, 76.

"the usufruct, or the rent, was one-fifth of the produce, and "one-fifth of the peasant's labour, or one day's gratuituous "labour in the Java week of five days. The Dutch, in re- "verting to the old system, logically carried out this idea, "holding that they had conquered the prince and not the "people, and therefore came into the prince's rights. They "however, reduced the labour rent from one-fifth to one- "seventh, substituting one day in the European week of seven "days, for one day in the Java week of five days."

"The different systems of land tenure in the island all "derive from this idea."

"*Landlord Property.*—Where the Dutch are masters by "treaty and not by conquest, the produce rent and the labour "rent are paid, not to the Dutch but to the Native Princes, as "in the Preanger and in Soerakarta and Djokjokarta. In the "rest of the island, where the Dutch are masters by conquest, "the one-fifth of produce and one-seventh of labour belong "to the Dutch Government, except on private estates, where "the Government has *pro tanto* granted away its rights. "There the one fifth and one-seventh are paid by the peasant "to the European or Chinese landowner, and the landowner "pays to Government three-fourths of one per cent. per "annum on the total value of his estate, equal at most to "one-fifth of the net yearly income."

"*Peasant's Property.*—The peasant's property under the "Native system to which the Dutch reverted, is of three kinds.

"1st. Village lands belonging jointly to the whole village "community, to his share in which every householder has a "right. These joint village lands are yearly partitioned and "separately allotted to every head of family according to the "size of his family, and according to their capacity to culti- "vate the land so allotted."

"2nd. Lands formerly uncultivated, which belong exclu- "sively to the peasant who brings them into cultivation. For "these he pays the one-fifth and one-seventh after five years, "but is exempt from all payment for them, and from all "gratuitous labour whatever, during the first five years."

"3rd. Lands which have descended from the first cultivator "to his representatives.

"The first cultivator, however, and also his representatives, "whether by purchase or descent, have, besides the land which "is exclusively theirs, their share as householders in the vil- "lage lands, so long as they choose to claim and cultivate such "share, but no longer. Either the first cultivator or his des- "cendants can sell any part of such their exclusive land, but "only as a peasant holding to some other cultivator, and "the purchaser stands in the seller's place, paying his one- "fifth and one-seventh. When any holder of such exclusive "land dies without heirs, his exclusive land reverts to the "common lands of the village within whose boundaries it lies. "In some districts, by custom, the first cultivator only holds "the land exclusively rent and labour free for six years, when it reverts to the common lands of the village."

"Such were the old land tenures and land rent to which the "Dutch reverted, with the modification of the old labour "rent of one day in five being reduced to the lesser rate of "one day in seven. The Java cottier would of course have "preferred the reduction of the produce rent without the re- "imposition of the labour rent; but, much as the Oriental "peasant hates labour, he still more hates parting with money. "The return to the old state of things was effected not only "without disturbance, but, the Dutch say, without even any "visible signs of dissatisfaction."

"*Present Java Land Tenure.*—This simple and well-defined "system of land tenure has ever since obtained all through "Java, except in the Native states of Soerakarta and Djokjo- "karta, districts on the Southern Coast of Java, which still "maintain a kind of protected and controlled independence, "like many of the Native states within our Indian territory. "There the old one-fifth of produce in kind and one-fifth of "labour are still received by the Native princes in the old "manner, and applied generally to the old purposes."

"The system which the Dutch substituted for our Ryot- "warree not only applies to Government lands and to the "Preanger, but also to private estates. The landlord's claim "for rent, long limited by customs, was in 1833 expressly "limited by law to one-fifth of his tenant's produce, and to "one day's gratuitous labour in seven. The produce rent on

"Government land is not expressly limited by law to one-fifth "but is settled at that rate with the village chief for the whole "village, and must be paid in money. The one-fifth of pro- "duce on private estates is generally taken by the landlords "from each cottier in kind. The labour rent on crown lands "is mostly employed on the roads and public works. On pri- "vate estates the labour rent is generally applied by the land- "owner to the cultivation of such parts of his property as he "keeps in his own hand. In other respects the produce and "labour rents are paid to Government or to a private landlord "as follows:—

"*Labour Rent.*—Every cottier, whether on Government "land or on a private estate, gives his one day's gratuitous "labour in every seven to his landlord, according to the roster "kept by the elected village chief. As this gratuitous labour "is a part of the rent for land yielding produce, it is not pay- "able by the artisan, or by any one holding house property "only. So also, as only one-seventh of labour is due by each "family, the head of the family alone is borne on the roster, "but, any competent grown member of the family, or other "substitute, performs the labour for him. Although when "the yearly appropriation of village lands takes place, a large "family gets more than a small one, still only one-seventh of "one man's labour is due by that family, however large. The "result very generally is, that, in each village, the house- "holders employ some few day labourers to do the gratuitous "labour for the whole village, for which they receive a cer- "tain daily payment from the villagers. By constant work on "the Government roads and irrigation embankments, or on "the landowner's private farm, these men become good hands, "the villagers get off their one-seventh of labour for a small "payment, and thus every one is satisfied."

"*Produce Rent.*—When the rice crop is ripe, but before it is "cut, it is assessed by agreement both as to quantity and "value between the cottier tenant and the landlord. In case "of agreement both as to quantity and value, the peasant is "left to cut down and sell his crop, and has to pay the amount "agreed on four months after harvest. If the landlord re-

"quires the one-fifth of produce to be paid in kind, the tenant "must deliver it at the landlord's grange on the property as "soon as reaped."

"If landlord and tenant cannot agee as to the number of "*piculs* the different fields will yield per *bahu*, the rest of the "villagers are called in, the crop is at once cut down, tied up "in *geddings* or bundles of *padi* as big as can be held in the "two arms, and put up in heaps of five *geddings* each. The "landlord or his agent then takes one *gedding* from every "heap. The villagers get a certain proportion of the *geddings* "for cutting down and stacking the crop, which, makes it the "the tenant's interest to agree to a rather higher assess-"ment in quantity, so as to be left to cut down his crop him-"self. The landlord is subject to the disadvantage, in thus "having the crop cut down by the villagers, of having to carry "away his own share, which also induces him not to insist "on quite the highest valuation in quantity he thinks the "can bear."

"If the landlord and tenant agree as to quantity, but can-"not agree as to the market price, the peasant is left to reap "his crop himself, and has to deliver to the landlord one-fifth "of the stipulated quantity of *padi* in kind, for the safe de-"livery of which the village chief is also responsible."

"The value to be agreed on is the current market value of "the neighbourhood in full harvest, and when consequently "the price is lower than the average throughout the year. "The cottier knows that if the landlord and he can agree as "to value, he will have four months time to pay in. He "knows that as soon as the harvest is all in, and the produce "rent of the neighbourhood has either been sold on the spot "or been sent away for export, produce will rise again to the "usual price through the year in his locality. It is the tenant's "interest, therefore, to agree to both the assessed quantity and "value if not exorbitant, while the landlord's estimate is kept "within bounds by the tenant's right to pay the actual one-"fifth in kind."

"*Large European Landowners.*—Although, as previously "mentioned, the English Government of Java found on in-"quiry that the Native chiefs did not even claim any proprie-

" tary rights in the soil, yet in some few instances considera-
" ble tracts of crown land were bestowed by us on Natives as
" private estates. On the return of the Dutch all our grants
" and alienations of crown land were recognised, but from that
" time the Java crown lands have only been leased out, and
" never granted away. The few Natives, whom we thus made
" landed proprietors, then entered into the same condition as the
" old European and Chinese landed proprietors, and their
" estates became liable to sale for arrears of land tax or for
" mortgage debt. The reckless and extravagant habits of
" these Native landowners have gradually alienated most of
" their properties, and there are now not above half-a-dozen
" Natives, out of the Preanger and other Native states,
" who are still owners of land. There is no prohibition a-
" gainst any Native buying any private estate which is for sale,
" but the practice is discouraged by the Dutch Government."

The culture-system, a description of which does not fall within the scope of this paper, has been founded upon and is in no way inconsistent with the native customary tenure.

## CEYLON.

The land-revenue system of Ceylon is based upon native custom, which, in this respect, resembles the practice, common to the Malays and other Indo-Chinese peoples, of levying a tenth or other proportionate share of the produce. A local Ordinance, passed in Ceylon in 1840, gave legislative sanction to a procedure devised for securing the due collection of the Government share of the crops of paddy and dry grain grown in the island. This tax was a well-recognised impost leviable by custom and continued by Government proclamations issued in the early years of British occupation. *

The law of 1840, which is still in force, describes the duty leviable to be " a tax of one-tenth or such other proportion
" of the crops of paddy and dry grain grown in and upon all
" lands now liable thereto, as by law, custom, or usage is at
" present levied or payable."

* Ordinance XIV of 1840, quoting in the preamble Proclamations of Sept. 3rd, 1801, and Nov. 21st, 1818.

The mode of collecting the tax was, in 1841, described as follows, by one who had held high office in Ceylon and whose unfavourable opinion of this system of collecting a land revenue was formed, therefore, after some experience :—

"When the crop is sufficiently advanced to enable an esti-
"mate to be formed of its possible produce, the Government
"Assessors proceed to calculate its probable value, and a
"return is made to the Government Agent of the amount
"leviable upon every field. The farm of the tax of each district
"is then sold by public auction; and, as the harvest approaches,
"the cultivator is obliged to give five days' notice to the pur-
"chaser of his intention to cut; two days' notice if he finds it
"necessary to postpone; if the crop be not threshed immedi-
"ately, the renter is entitled to a further notice of the day
"fixed for that purpose; and for any omission or irregularity
"he has a remedy by suing for a penalty in the District
"Court."

"It would be difficult to devise a system more pregnant
"with oppression, extortion, and demoralisation than the one
"here detailed. The cultivator is handed over helplessly to
"two successive sets of inquisitorial officers – the assessors and
"the renters; whose acts are so uncontrolled that abuses are
"inevitable, and the intercourse of the two parties is charac-
"terised by vigour and extortion on the one side, and cunning
"and subterfuges of every description on the other. Every
"artifice and disingenuous device is put in practice to deceive
"the headmen and assessors as to the extent and fertility of
"the land and the actual value of the crop; and they, in
"return, resort to the most inquisitorial and vexatious inter-
"ference, either to protect the interest of the Government, or
"privately to further their own. Between these demoralising
"influences, the character and industry of the rural popula-
"tion are deteriorated and destroyed. The extention of culti-
"vation by reclaiming a portion of waste land only exposes
"the harassed proprietor to fresh visits from the headmen, and
"a new valuation by the Government Assessor, and where
"annoyance is not the leading object, recourse is had to cor-
"ruption, in order to keep down the valuation."

"But no sooner has the cultivator got rid of the assessor than "he falls into the hands of the renter, who, under the autho- "rity with which the law invests him, finds himself possessed "of unusual powers of vexation and annoyance. He may be "designedly out of the way when the cultivator sends notice of "his intention to cut; and if the latter, to save his harvest "from perishing on the stalk, ventures to reap it in his ab- "sence, the penalties of the law are instantly enforced against "him. Under the pressure of this formidable control, the "agricultural proprietor, rather than lose his time or his crop "in dancing attendance on the renter, or submitting to the "multiform annoyances of his subordinates, is driven to pur- "chase forbearance by additional payments; and it is generally "understood that the share of the tax which eventually reaches "the Treasury does not form *one-half* of the amount which is "thus extorted by oppressive devices from the helpless pro- "prietors."

"The same process which is here described for the collection "of the tax upon rice lands in the valleys is resorted to for "realising that upon dry grain in the uplands and hills; and it "is a striking confirmation of the discouragement to the exten- "sion of agriculture, which is inseparable from a system so "vexatious and so oppressive, that by a return of the produce "of the paddi tax and that on dry grain for the years prior to "1846, during which the cultivation of every other description "of produce had been making extensive advances, it was shewn "that the production of corn had been for some time station- "ary in Ceylon; and the increase has been very inconsiderable "since."*

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## Chapter X.

## LAND TENURE IN MALACCA UNDER EUROPEAN RULE.

British rule in Malacca dates from 1825, the year in which the cession arranged by the treaty with the Netherlands of

* Sir Emerson Tennent's *Hist. of Ceylon*, II, 170, *n.*

1824 was carried into effect. It is true that from 1795 to 1818, Malacca had been held by the English, but this was more in the nature of a military occupation, which might come to an end at any time on the cessation of war, than permanent civil administration. As far as can be learned, the Government of Malacca between 1795 and 1818 went on very much as it had under the Dutch, save for the removal of restrictions on cultivation and trade and for the humane reforms of Lord MINTO in the criminal procedure.* At all events at first, documents dealing with rights in land were made out in the Dutch language for the signature of the English Governor.

Taking 1825 as the starting point, what was the land tenure of the Settlement as the British found it in that year? I reply unhesitatingly that it was the native tenure of the Malays, unchanged in any way either by Portuguese or Dutch rulers. † All the evidence supports this, the absence of any express land laws or regulations passed during the preceding period of European rule, the fact that such records as we have of the Dutch administration exhibit the government upholding the customary rules of native tenure, the fact that in their other eastern possessions the Dutch have consistently maintained the native tenure as they found it, and the fact that at the date of the final cession of Malacca a code of regulations was under the consideration of the Dutch Government, which is founded in all respects upon local custom and has nothing in common with any European system.

There were very good reasons why the tenure of Malacca should not have been interfered with. The Portuguese rule was the mere military occupation of a fortress, by which the command of the Straits, and thereby of the eastern trade, was

* "Malacca was to have been restored to the Dutch at the peace of Amiens, "in 1802; but war recommenced (May 1803) before the transfer was made, "and the Dutch falling again under the gripe of France, it consequently "remained in the hands of the British until 1818. The law of Holland con- "tinued to be administered, and the decrees of the courts of justice passed in "the name of their High Mightinesses."—NEWBOLD, I, 126.

† "The Portuguese, while they held Malacca, and, after them, the Dutch, "left the Malay customs, or *lex non scripta*, in force." See the judgment of Sir BENSON MAXWELL in *Sahrip* v. *Mitchell and ano.*, Appendix, p. xli.

maintained. They were frequently besieged, and the enemy was on more than one occasion up to their very gates. It would be absurd to suppose that any new land system was devised or introduced for the limited area covered by the fort and town in those troublous times. The Dutch drove out the Portuguese in 1640. At no time during their occupation did the Dutch open up the interior by means of roads: their forts at St. JOHN's hill and elsewhere shew that the suburbs were not always peaceful, and there is little reason to suppose that their direct rule extended far from the town of Malacca itself. The whole object of their establishment was trade, and, in the words of an English official who had studied the subject, "Malacca was considered a mere outpost of the "Supreme Colonial Government in Java for securing Dutch "supremacy and monopoly in the Straits. Not only was "agriculture discouraged, but it was absolutely preventeh. "The cultivation of grain was forbidden as interfering witd "monopoly in Java, and other species of tropical cultivation "were equally disallowed from the same cause."* Among the sources of revenue of the Dutch Government before 1795 there is no mention of land revenue, and the absence of this item is sufficiently accounted for by the statement just quoted.

The Dutch did not introduce any land laws, or derive any public revenue from land, but they fully recognised individual rights in land, and supplied the means of proving title by written documents. These rights were, for the most part, rights acquired under the local native customs, and the manner in which they were transferred was quite in keeping with the native mode of thought. I have already quoted (*sup.*, p. 120) a passage from the Kedah laws in which it is laid down

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* *Journ. Ind. Arch.*, *II*, 737 ; Id. X, 45.—"Though under the dominion "of an European power for about 250 years, it remains, even to the foot of "the lines of the town, as wild and uncultivated as if there had never been "a settlement formed here, and except by the small river that passes be- "tween the fort and town, you cannot penetrate into the country in any "direction above a few miles; nor is even this extent general, being con- "fined to the roads that run along the seashore about two miles each way "and one that goes inland (about four miles)."—Capt. LENNON's Journal,—1796—*Journ. Straits Branch R. A. S.*, No. 7, p. 62.

that the Raja's concurrence shall be necessary to validate a transfer made by a land-owner to another. This is the principle upon which the Dutch documents of title, still extant in Malacca, seem to have been issued. A purchaser or inheritor of land had to go before the Court of Justice and declare and prove the transaction by which he claimed possession of the land. Upon satisfactory proof being adduced, the Court confirmed the transfer or tranmission and issued to him a document in the nature of a certificate of his right of possession, that is of his proprietary right under the local law. The greater part of the land in the town of Malacca is held in this manner, and it has been hastily assumed that the certificates of the Dutch Court of Justice have superseded earlier grants issued to the original proprietors. I do not believe that there is, in the majority of cases, any foundation for such an assumption. Land in the town and suburbs of Malacca was in the possession of individuals before the Dutch occupation—and before the Portuguese conquest for the matter of that. It was held and continued to be held either by the native possessors or by new-comers, with or without the permission of the ruling authority, under the local tenure. Only, after the establishment of a Court of Justice by the Dutch, secret alienation was not permitted. A transfer of land had to receive the sanction of the government, in whom theoretically the soil was vested, and this, as has been shewn, is quite in accordance with Malay ideas.

The uncertainty attending the terms on which such land could be held is clearly evidenced in some of the Dutch documents Sometimes it is expressly declared that the land is subject to any taxes, &c., which may at any future time be imposed, and this sufficiently indicates that the terms ultimately to be imposed were not settled, though it was well understood that land was liable to a customary tax if the Government should at any time choose to exact it. But, as I have shewn, no land revenue was collected in Malacca in Dutch times and presumedly no tax was ever imposed. The land on which the town of Malacca stands pays no rent, tax or revenue of any kind to the Government, to this day. But there can be little doubt that it is open to the Government of

the Colony to exact any reasonable assessed rental at any time, if, as I contend, the tenure on which this land is held is the native tenure of the country and in no sense "fee simple," as the holders of it would like to maintain.

The Dutch claimed authority over the interior of the province of Malacca, though they neither made roads, maintained order, or otherwise directly governed the district. The greater part of it was granted away as *terres particulières* (see *sup.* p. 96) to Dutch settlers, traders, or officials in the town, and in some instances to natives. These had, that is to say, the right of standing in the place of the Government and collecting the customary tenth on produce. Several families were able to make a small income in this way, through Malay headmen appointed by them over these lands, or through Chinese sub-renters to whom they farmed out their privileges. But they had no right to the soil, and there is little reason to suppose that the Europeans either lived on or even visited the lands over which their rights extended.

This again is a purely native institution, copied by the Dutch. Its origin will be found in the extract from the Malacca Code, in Appendix I p. xv, and in the description of the "private lands" in Java by Dr. Winckel (*sup.* p. 94), who expressly states that the custom there is a native one which originated with the Javanese sovereigns.

Besides the occupiers of the town and suburban lands and the proprietors (*tuan tanah*) of the concessions just mentioned, there were the Malay peasantry in the interior, proprietors, sub-tenants or mere cultivators, as the case might be, under the native laws already described. That these were never very numerous in Dutch times, when the cultivation of rice was absolutely forbidden, may be assumed from the fact that in the eight years from 1828 to 1836, (paddy-planting having been permitted since 1795) the average number of cultivators paying tenths was only 2,364. * In fact, under Dutch rule, the concessions must have paid very little to their proprietors, and

* Newbold, I, 165. Mr. W. T. Lewis, Assistant Resident of Malacca, in 1828 estimated the Malacca territory to be 450 square miles, of which 5,653 acres only were cultivated.

it was only under the British Government, after 1795, that they began to be valuable.

The land-holders, then, in Malacca, at the time that the British took possession of the place finally in 1825, were of three classes :—

1.—Holders of land in the town and suburbs, with or without certificates of the Court of Justice ;

2.—Proprietors of concessions, in the nature of *Zamindári* rights, over country lands ;

3.—Native cultivators having a proprietary right ;—

all holding under the local customary tenure of the country.

It was difficult at first for the officers of the new Government to obtain accurate information as to the state of the tenure. The persons belonging to the second of the three classes just enumerated—"proprietors," as they called themselves, "tithe-owners" or "impropriators," as Mr. Young termed them*—commenced by making wholly inadmissible claims. For a time it seemed as if the whole of the land of the Province, beyond the town-limits, was the absolute property of "proprietors," whether cultivated land, waste land, or forest. There was no one to appeal to for information as to the nature of the tenure except the "proprietors" themselves and their friends and relations. Such information as they could or would give will be found in the minutes of a meeting held by the Resident Councillor on the 10th of October, 1826 (Appendix II). They claimed the unqualified ownership of hundreds of square miles of land, the greater part of which was uncleared forest because, though the rights granted in respect of it had been conferred with a view to its bring cleared, the Dutch Government had never enforced this stipulation! They called the cultivators their "tenants," and denied the right of any one to settle on their alleged estates without permission; yet they admitted the right of a "tenant" to sell, mortgage and devise his land and to extend his property by taking up waste land at will. They alleged a customary right to collect

* Correspondence relating to the Land Revenue System, S.S.—Mr. Young's 3rd Report, pp. 51-75.

a rent which was ordinarily a tenth of all produce, but admitted that they had no right to levy a higher rate.

It need hardly be said that this description was not sufficient to convince the Governor (Mr. FULLERTON ) that the relative rights of Government, "proprietor," and "tenants" had been correctly stated.* He pointed out the inconsistencies which occurred in the information elicited at the meeting, and the claims of the *concessionaires* to be absolute owners were never recognised. It was made clear by the production of a Dutch Proclamation, dated 14th December, 1773, and a later one dated 20th May, 1819 (Appendix IV), that the latter were forbidden, under pain of a heavy fine, from levying more than one-tenth of the produce from the cultivators. This satisfied the Governor that all that had ever been given up by the Dutch Government to the *concessionaires* was the right of collecting the tax of one-tenth of the produce, and that no valid claim could be made out to any absolute right of ownership of the soil. It was decided to redeem the rights which had been thus given up, and in 1828 these were repurchased by Government from the *concessionaires,* who received in lieu of them hereditary allowances calculated according to the respective values of the concessions so re-acquired by Government. In a few cases, owing to absence from the Settlement, or incapacity to contract, on the part of the persons entitled, the re-purchase of the right of levying the tenth was not carried out, and this right is, therefore, still enjoyed by a few individuals in Malacca.

The lands at Malacca, having been just freed from the incubus of a middleman between Government and the cultivator, were taken in hand by the authorities. A Superintendent of Lands was appointed, and a Regulation for the Administration of the Land Revenue Department was passed on the 25th June, 1828, which, after approval by the Board of Directors, became Regulation IX of 1830.

The foundation of much of the mal-administration that has followed may be traced to this very incomplete measure. The Government ought then to have decided whether the tithe

* See Mr. FULLERTON'S minute, Appendix II, p. xxx.

system was to be persisted in or not; whether land was thenceforth to be taken up in the old way and to be subject to the payment of tenths, or whether any other system of tenure was to be introduced. But what was done was this :—

(1). The Government determined to collect the tenth on produce which had just been re-acquired from the former tithe-owners, and toll-houses were erected throughout the country to intercept produce on its way to market.

(2). A determination was announced to survey the holdings of the then cultivators and to issue "title-deeds" for them. This was not carried out.*

(3). For lands disposed of subsequently, grants and leases were to be issued under English law.

(4). The Regulation was silent as to the method of enforcing the levy of the tenth.

Is it surprising that the result has been incessant confusion ever since ? Here was a native tenure easily intelligible and suited to the customs and traditions of the people. It was possible to carry it out in its entirety by encouraging the exercise of the free right of taking up land for agricultural purposes and the acquisition of an alienable proprietary right, subject to the payment of tenths, and by providing legal machinery for the collection of tenths and the punishment of persons evading payment. It was possible, on the other hand, to abandon it, to levy an assessment (founded, as in India, on a rough survey or estimate of area) in lieu of it, and to alienate lands in the future on this system. But neither of these systems was adopted. The old lands cultivated and liable to tenths before 1830 remained subject to the native customs, but they were not identified by registration or survey. Lands taken up and brought into cultivation without permission after 1830 could not, therefore, in subsequent years, be dis-

* "A Surveyor was appointed, but before he had been many months "employed, his services were dispensed with in the general reduction, and "in consequence until this day (1856), except in the immediate vicinity of "the town, the lands are not measured, nor do the tenants hold any docu-"ments to prove their rights." *Journ. Ind. Arch.*, X, 61.

tinguished from them. The tithe system was maintained, but the toll-houses proved to be a nuisance and at the same time an inefficient means of collecting the tax. It must have been obvious that much produce liable to the tax would not pass the toll-houses at all, while, on the other hand, produce exempt from taxation, *i.e.*, that derived from the lands of Penghulus, etc., and from lands leased or granted on a quit-rent after 1830, would very likely be charged. The outlook from the first was not promising, and two important facts—one legal and the other administrative—tended to aggravate all the other difficulties. One was the decision of the Recorder, Sir B. "MALKIN,* "that the introduction of the King's charter into "these Settlements had introduced the existing law of Eng- "land also, except in some cases where it was modified by "express provision, and had abrogated any law previously existing," † and the other was the alteration in the form of government and the reduction of establishments which took place about 1830. Thenceforward there were only two officers to perform all the executive and judicial duties of the station.‡

The Malacca Land Regulation (IX of 1830) was not long regarded as law. It was passed by the same authority as the Singapore Land Regulation, which was judicially declared by Sir B. MALKIN, to be illegal because it was not a Regulation "for imposing duties and taxes," those being the only purposes for which the Governor in Council of Prince of Wales' Island, Singapore and Malacca could legislate.§

Changes in the law and in the Government were followed soon afterwards by the Naning War (1831-2). So it will be seen that the years which immediately followed the cession of Malacca were characterised by a number of incidents which rendered the establishment of a successful administration of the Land Department a very difficult operation.

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* RODYK *v.* WILLIAMSON, 24th May, 1834.

† *In the goods of Abdullah*, 31st March, 1835. Special Reports of the Indian Law Commissioners, House of Commons Papers, 30th May, 1843, p. 90.

‡ *Journ. Ind. Arch.*, X, 55.

§ Indian Law Commissioners' Report, 66. For an abstract of the Singapore Land Regulation, see *Journ. Ind. Arch.*, IV, 214.

The difficulties with which the Government was brought face to face in 1829, the introduction of English law which rendered the enforcement of Dutch or native customary laws, however well suited to the place, impossible, the absence of legislative power in the Local Government, and the consequent impracticability of enforcing revenue claims and compelling the delivery of the tenth, were well summarised by Mr. FULLERTON, in a minute dated 18th May, 1829, from which I extract the following passage :—

"This brings me to the explanation of the radical cause why "revenue cannot be raised in these eastern countries. On the "continent of India, the Governments are invested with legis- "lative power, and that power is exercised in prescribed form, "by the enactment and promulgation of laws registered in the "Judicial Department, under the term of Regulations. Those "Regulations, besides providing for the forms of administering "justice, define the relative rights of the Government and the "subject, and prescribe the mode under which those rights are "to be inferred on the one part, maintained on the other, by "application to local Provincial Courts, bound to act accord- "ing to those Regulations. The Supreme Courts have no "jurisdiction in any matters of Revenue, or the collection "thereof. In the Revenue Department, public officers hold "summary powers of enforcing, in the first instance, all de- "mands, whether for payment of arrears, ejecting from lands "unduly held, leaving the *onus prosequendi* on the party sup- "posing himself aggrieved, distraint when no arrear is due, or "ejectment from lands properly belonging to him. It is only "under the exercise of the summary process that the collec- "tion of the Government Revenue in India is insured. In "these eastern settlements the Government has no power of "framing those legislative provisions. There does not, there- "fore, exist any distinct and clear definition of relative rights, "or prescribed mode of enforcing and preserving them. There "are no Provincial Courts acting under local law. Govern- "ment possesses no power of enforcing its demands. The "Court administering justice as a Revenue Court is a King's "Court, framed on the English model, and taking the common "law of England as its guide. Questions of Revenue, there-

"fore, whether arising from land or excise, fall to be tried "under principles that have no relation or resemblance to the "local situation of the country and its inhabitants. Before "demands can be enforced, legal process in all the English "forms must be resorted to; writs of ejectment must be sued "for: suits entered for arrears; delays, expenses, doubts and "difficulties arise that render it easy for the people to evade "the payment of all demands, and induce the officers of Gov-"ernment rather to abandon the demand, small in individual "cases, though considerable in the aggregate, rather than "encounter all the difficulties and go through forms which "they cannot understand. Let us suppose, for example's sake, "that the Supreme Court at Calcutta were at once declared "the only Revenue Court; that every arrear of Revenue, "every question resulting from its collection, or the occupa-"tion of land, were to be tried there in the first instance, under "all its forms; would it possible to realize the Land Revenue? "Yet this, in a small way, is exactly our case. Singapore, "indeed, is of recent acquisition, and the titles hitherto given "have been in English form: but even at Singapore, there is "much land occupied without any title whatever; and unless "something is done by regular enactment, possession will make "a title, as it has done in this Island, from the neglect of the "local authorities. But how are we to regulate decisions at "Malacca? There the sovereign right is one-tenth of the "produce; the Dutch made over the right to certain of the "inhabitants more than 100 years ago. This Government, by "way of insuring increase of cultivation and introduction of "population, redeemed the right. How are we to levy the "tenth, if refused? The land tenures at Malacca bear no "analogy or resemblance to any English tenure; yet by such "they must, in case of doubt, be tried. Regulations adapted "to the case have indeed been sent to England, but until local "legislation is applied, and the mode of administering justice "better adapted to the circumstances of the place, it seems to "me quite useless to attempt the realization of any Revenue "whatever."

References to Bengal on the many vexed questions relative to the occupation and alienation of land in the Straits were

incessant for the next ten years. Each of the three Settlements had its separate history and its peculiar administrative difficulties, and it was no easy task to find out and apply the proper remedies in each. In 1837 the Supreme Government in Calcutta gave effect to some of Sir B. MALKIN's recommendations by repealing the local Land Regulations (the legality of which was more than doubtful),* with a view to the introduction of a general Land Law, and by passing an Act (No. XX of 1837) which modifies, in the Straits, the English law of succession and makes all immoveable property descend to the executor or administrator and not to the heir. † In the same year a Commissioner (Mr. YOUNG) was despatched from India to the Straits Settlements to settle existing disputes and difficulties about titles to land and to report on the whole subject. He visited Malacca in 1838, and again there was an opportunity of putting the land revenue system on an intelligible basis, either by ascertaining, and formally enacting as law, the native customs relative to the collection of the tenth (as was done in Ceylon a few years later ‡), or by establishing by law the principle of an assessment in money, instead of the tax in kind, to be levied on the cultivated area as in India.

Mr. YOUNG recommended neither. He deprecated legislation, and preferred to trust (the result has shewn how vainly) to argument and persuasion to induce the Malays to commute the tithe for a fixed annual payment in money. The idea started in Regulation IX of 1830, that each cultivator was to have a title-deed for his holding, seems to have taken complete possession of that generation of Land Revenue officials and the object of every succeeding administration seems similarly to have been to force documents of title upon an unwilling population. The toll-houses were discontinued and the voluntary commutation plan was tried. Its complete failure was thus described by Mr. E. A. BLUNDELL in 1848 :—

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* Act X of 1837, s. 1.

† See Sir B. MALKIN's letter to the Government of India, dated July 17, 1837; Report of Indian Land Commissioners, p. 85.

‡ *Sup.*, p. 145.

"He (Mr. Young) seems to have brought to notice the "very objectionable system of levying a revenue in kind on "the produce of the lands, and to have induced the resort to a "commutation of the tenths into a money payment, but "unfortunately the mode adopted either by or through him, "was one that proved most unpalatable to the natives of the "place, and by its enforcement led to much vexation and dis-"satisfaction. This novel mode of raising a land revenue was "by means of technical English legal indentures between the "tenants and the East India Company, drawn up with all the "precision and formality of a practising attorney in England, "whereby the tenant engages to pay so much per annum, and "the East India Company engages not to demand any more, "during a period of twenty years from the date of signing. "This legal document occupies the whole of one side of a "sheet of foolscap, while the other is filled with Malayan "writing purporting to be a translation of the English, but, "as may well be supposed, failing entirely to convey to a "native reader any idea of its meaning. It requires some "knowledge of law to understand the English original, con-"sidering that it is drawn up in strictly legal terms, and the "attempt to translate those terms into Malay has produced "an utterly unintelligible jumble of words. Indentures being "duplicate documents are of course required to be signed, "sealed and delivered in duplicate by each party in the pre-"sence of witnesses. To secure therefore the payment (often "of a few annas only per annum) the tenants (ignorant "Malay peasants) were sent for in shoals to put their marks "to these sheets of foolscap paper filled with writing. They "naturally got alarmed and evinced the greatest reluctance "to affix their signature. To overcome this reluctance and to "induce a general signing throughout, seems to have been the "great and almost sole object of the Land Department from "that time to the present. All the ingenuity of Residents "and Assistants has been exerted to this end and all the prin-"ciples of political economy have been exhausted in endea-"vouring to explain the advantages of the system, but in "many parts without success. Threats, coaxings and expla-"nations have been set at defiance, and an obstinate determi-

"nation evinced not to sign these legal papers. In 1843 or "1844, the then Resident hit on the notable plan of punishing "the recusants for their contumacy by putting their tenths up "to auction and selling them to a Chinaman, the very thing "that formed one of the grounds for redeeming the lands from "the proprietors!"

The Government had redeemed the rights granted in the days of Dutch rule to a few privileged "proprietors" and the worst that was said of the bargain for some years was that it had been rashly and improvidently concluded and had resulted in an annual loss to Government. But as time went on it was discovered that the Government had by no means acquired, as had been supposed, an unfettered right to deal with the waste land of Malacca. The deeds by which the "proprietors" surrendered their rights to Government contained a stipulation to the effect that, in case the Settlement of Malacca should ever be given up to any other Power, they should be restored to their original position with respect to the lands.* This proviso effectually prevented the Government from giving a clean title to purchasers.

The legal difficulty thus engendered, and the acknowledged failure of the voluntary commutation plan, necessitated reference once more to the Government of India, and in 1861 a Bill was introduced in the Legislative Council of India, which, it was hoped, would give the local authorities all the necessary powers. During a debate on this measure, the law officer of the Government (Mr. Sconce) read to the Council an extract from a letter written by Mr. Blundell, ex-Governor of the Straits Settlements, in which the injurious effect of the exaction of the tenth in kind was pointed out. He further explained that twenty years earlier an attempt had been made to commute the payment in kind to a money payment, which had failed "from the bad way in which it was carried out," and that many disputes had arisen from the inefficiency of the native surveyors, "whose surveys were so bad "that constant disputes were arising in consequence of them, "many lands having been assigned twice over." To meet

* *Journ. Ind. Arch.*, X, 60-61.

this difficulty the Bill provided for a survey and a summary settlement of the rights of parties, "which would put an end to disputes."*

The Bill in due time became law and, as Act XXVI of 1861, is still in force in the Colony. It settled summarily all difficulties as to the title of the Government to the lands over which the Dutch grantees had once had rights, by vesting the lands in question in fee simple in Her Majesty and thus for ever extinguished any hopes which the former grantees might have entertained of regaining possession, at some future time, of the surrendered rights.

It also declared what was the legal status of certain classes of native land-holders and provided a scheme of survey and settlement, analogous to the Indian system, under which the rights and liabilities of every one could be ascertained and recorded.

But thirty years had been lost and the lands taken up with or without authority in that period were now not to be distinguished from the lands which were held under the local customary tenure at the time when Regulation IX of 1830 was passed.† The duty to be undertaken was a completely new survey of the Settlement of Malacca, in the course of which the status of every person claiming to have title to land was to be ascertained and declared; and this was not facilitated by any earlier survey and settlement, for the provisions of Regulations IX of 1830 in this respect had been allowed to remain a dead letter,‡

The Act contemplated (s. 1) two classes of native land-holders, namely, (1) "cultivators and resident tenants" of the lands redeemed from the Dutch grantees, and of lands in Naning "who hold their lands *by prescription*;" §

(2) "All other cultivators and under-tenants who now occupy or hold, or shall occupy or hold, any of such lands as aforesaid." Those who could prove a proprietary right under

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* Bengal Hurkaru, January 19th, 1861.

† *See* p. 151.

‡ *See supra*, p. 154, note.*

§ *i. e.*, by local custom, usage or law, *Sahrip* v. *Mitchell*, Appendix III, p. xli.

the local customary tenure, and who came, therefore within the first category, were declared to be liable to a payment, either in money or kind, of one-tenth part of the produce of the land to Government.

Those (class 2), whose occupation was independent of the native customary tenure were to be treated as squatters under the Straits Land Act (Act XVI of 1839, s 2) and had the alternative of "engaging for" their land on terms fixed by the Government, or of removing from it altogether.

Power was given to the Governor to commute the customary liability of a land-holder to pay tenths in kind, for a sum down and an annual quit-rent.

Waste land at the disposal of Government was to be alienated, in the discretion of the Governor, to applicants, in perpetuity or for any term of years and subject to any quit-rent agreed upon; and the local customary right, which the peasantry of Malacca possessed, of taking up forest, waste or uncultivated land and acquiring a proprietary right over it by clearing and cultivating it, was taken away. Every land-holder was, however, declared to be entitled to add to his holding by engaging for contiguous uncultivated land in the proportion of one part of waste for every four parts of land cultivated by him.

Finally, certain legal powers were given to officials to be appointed by the Governor, to make a survey of the lands of the Settlement, to require the attendance of parties and the production of documents, and to enquire into and decide questions of title, subject to an appeal to the Court of Judicature.

If this Act had been properly worked by a sufficient establishment, there would seem to be no reason why the Malacca Land Revenue Department should not be at the present time, as regards survey, settlement, maps, registration of holdings, and record of rights, on as satisfactory a footing as any settled district in an Indian province.

But no settlement operations on a sufficiently extended scale were ever undertaken. A surveyor was appointed and worked for some years during which time a tolerable survey of the coast districts (about one-fourth of the whole) was executed. The

maps so obtained were never published and the Indian system of declaring particular land to be liable for so much revenue annually, leviable quite irrespective of any title-deed delivered to the occupant, was not enforced by the Land Office, though this is distinctly what the Act aimed at. The officials of the day seem to have been still unable to get rid of the idea that the only way to make an occupant liable for land revenue was to make him sign a lease first of all.

In the words of the late Attorney-General of this Colony (Mr. T. Braddell, C.M.G.), whose paper on the Malacca Land History * has been of the greatest value to me in compiling these notes,—" the cultivators, finding themselves better off under the Penghulus, with whom ( when they had no written titles registered in the office, and followed by regular demands for the rent expressed in the title-deed) they were able to evade payment of the tenths, still refused to take titles, and continued to occupy old lands and to open up other lands with impunity, owing to the weakness of the Land Department, which was provided with so few, and such inefficient officers, that there was no regular supervision, and when any person was found encroaching on the Crown lands he was all ready with the excuse that the land was prescriptive tenant land."†

Systematic work in Malacca under Act XXVI of 1861 ceased with the departure of Surveyor-General Quinton from that Settlement, about 1867.

A passing reference may here be made to Ordinance XI of 1876, intended to facilitate land-administration in Malacca, which has remained more or less a dead-letter for want of an efficient establishment.‡

Neither Act XXVI of 1861, nor the Ordinance last quoted, touch on a subject which has attracted the attention of several persons who have written upon Malacca Lands. It has been stated above (p. 153 ) that owing to absence from the Settlement, or incapacity to contract, on the part of the persons entitled, the right of collecting the tenth was not redeemed

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* *Journ. Ind. Arch.*, N.S., I, 43.

† Proceedings of the Legislative Council of the Straits Settlements, 1882, p. 68.

‡ *Id.*

by Government in all cases and that this right is still enjoyed by a few individuals in Malacca. BLUNDELL speaks of the omission to carry out the redemption policy in these few instances (which of course ought to have been dealt with as soon as the exceptional circumstances alluded to ceased), as an "important error," but describes the unredeemed lands as "so small in extent (probably not one-tenth of the whole), "and already (1848) so far occupied, as to preclude their "being selected for any extensive cultivation" by a new colonist prospecting for agricultural land.*

The plan proposed by Mr. W. R. YOUNG, in 1838, of providing by a special Act for the resumption by the State of the privileges held by the few remaining tithe-impropriators, upon the award of compensation on an equitable principle, has not yet been acted upon. Perhaps the limited area of the land in question, which, he states, "does not exceed in area four or five square miles," was thought to characterise the matter as one of not sufficient importance to demand special legislation in Calcutta. Mr. YOUNG's remarks and recommendations are as follows :—†

"I must here mention that although the great bulk of the "impropriators transferred their rights to the Government in "1828, a few of them were not included in Mr. FULLERTON's "arrangement, either by reason of the absence from Malacca "of the principals, at the time of the negotiation, or because "some of the tithe-owners had sub-let their privileges to "others for a term of years, and the derivative interests thus "created stood in the way of the admission of those impro-"priators into the scheme of adjustment. The land thus "excluded from the general arrangement does not exceed in "area four or five square miles, and I believe that the impro-"priators would be quite willing to surrender their privileges "to the Government in consideration of receiving compensa-"tion on the principle which was applied to the cases of the "other tithe-owners. I think it would be desirable, for the "sake of uniformity, to extend the arrangement to these par-"ties, although the land in question is not sufficiently exten-

* *Journ. Ind. Arch.*, II, 743, 744.

† *Correspondence relating to the Land Revenue System of the Straits Settlements, 1837-1844*, para. 40, p. 69.

"sive to offer any important obstruction to the satisfactory "working of the new system as a whole. The position of the "lands referred to, their limited area, and the facility of ob- "taining correct information respecting their produce and "value, would obviate all risk of a recurrence, in relation to "them, of the miscalculations or deceptions which have ren- "dered the existing composition with the tithe-owners so bad "a bargain to the State. If, however, these impropriators "should be unwilling to assent to an equitable arrangement "with the State for the surrender of their rights—the terms of "which might be settled by arbitrators—and if Government "should be of opinion that the retention, in hands of a few "individuals of privileges, the reservation of which, even to "the ruling authority, has been declared to be incompatible "with the good of the country, would militate against the "beneficial working of the new plan—there would be neither "injustice nor difficulty in providing by law for the transfer "of those privileges to the State, with a view to the perfec- "tion of the commutation arrangement, compensation, on an "equitable principle being of course awarded to the parties "whose interests may be affected by the transfer. A measure "of this sort would, I have no doubt, be acceptable to the "tithe-payers, who will soon find themselves in a more un- "favourable position than their neighbours who have assented "to the commutation, and, indeed, there is little reason to "suppose that the tithe-owners would object to a fair adjust- "ment. Perhaps it would be advisable that Government "should direct the local authorities to negotiate with the "impropriators in question for the surrender of their rights "to tithes, and to report the result for the approval or further "instructions of the Supreme Government."

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A good deal has been said lately about "British Malaya," under which term those who favour a policy of extending our territory on the Malay Peninsula, by annexation, would include the Straits Settlements, and at least those Native States which are now under our direct protectorate (Perak, Salangor and Sungei Ujong). A word, therefore, may here be added as to the lessons to be learnt from the history of the land-laws

applied during the last sixty years to the only Malay State which has yet become British territory.

In Malacca, the native system of land tenure and revenue has never been properly ascertained and put into the shape of an Act. It has always been, therefore, and still is, more or less unworkable under English law.

The lands held under the native tenure at the time of cession were not identified and registered, and though a new system of tenure under English grants and leases was introduced, the old native system went on extending itself side by side with the new one.

When, in 1861, it was declared to be the intention of Government to put a stop to the native system of acquiring a proprietary right by occupation, the holdings then existing were not ascertained by a visitation or survey.

So, though the native revenue system cannot be satisfactorily worked, for want of power to exact the tenth, the officials have been unable to oblige the people to adopt the English tenure, because lands, really only recently brought under cultivation, cannot always be proved not to be old holdings under the native tenure.

The experience of other British possessions in the East conclusively shews that the wisest way to organise the collection of land revenue in an Asiatic country is to adopt and extend the native system, to work it through responsible trained officers charged with the care of separate tracts and living in their districts, to create a revenue side of every District Officer's Court and to have nothing to do with English law.

This paper, which has grown to unexpected proportions, may now fitly end with a final quotation from an official report :—

"It would be well if in the Protected States the history of "Malacca tenures were taken as a warning, and if an early "opportunity were taken of ascertaining the rights of native cul-"tivators and land-holders and securing to them their full enjoy-"ment, while laying down any modifications of the native law "which may be decided on as to the future. If something of "this kind is not done, the modern clearing will be undistin-"guishable from the ancient holding and land will continue to

"be occupied and acquired on a system which it is difficult to "assimilate with any satisfactory land revenue scheme."*

W. E. MAXWELL.

* Proceedings of the Legislative Council of the Straits Settlements, 1883, p. 479.

# APPENDIX.

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[N. B.—The text followed in the subjoined extracts from Malay Codes of Laws is, in the case of the Malacca Code, a copy formerly the property of the late Mr. J. B. WESTERHOUT of Malacca and now belonging to Mr. D. F. A. HERVEY, Resident Councillor of Malacca; for the Perak Code, a manuscript in my own possession, copied from a manuscript formerly belonging to Sultan JAFAR of Perak, and about sixty years old; and for the Menangkabau Code, an old manuscript once the property of a former Perak Chief, the Raja Makota.]

فري حكم اورڠ منبس رمبا يڠتياد دفرهمائي اورڠ ماينكن ميلك اورڠ سهاج دواجنجين

بهوا اد يڠ منبس ايت اسلام كدوا بومي اية جاڠن اد ميلك اورڠلاين

افيبل دتبس مك بارڠيڠ اد ددالمن اية فندافاڽ يڠ منبسله

برمول جيك اد سيروكن ايردالم بومي اية يڠلبه درفد حاجتن اكن مندير وس تنامنن دان اكن دمينمن سرة مينومن بناڠن مك جاڠنله دلارڠكن دان دبهكنيله اكن اورڠيڠ دهيلرپ ايت

Pri hukum orang menebas rimba yang tiada per-huma-i orang melain-kan milek orang sahaja dua janji-nia.

Bahwa ada yang menebas itu Islam, ka-dua bumi itu jangan ada milek orang lain.

Apa-bila di-tebas-nia maka barang yang ada di-dalam-nia itu pen-dapat-an yang menebas-lah.

Ber-mula jika ada sirau-kan ayer dalam bumi itu yang lebih deri-pada hajat-nia akan men-dirus tanam-an-nia dan akan di-minum-nia serta minum-an benatang-nia maka jangan-lah di-larang-kan-nia dan di-bahagi-nia-lah akan orang yang di-hilir-nia itu.

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فد مڤتاكن سكل تانه فرهمائن يڠتياد دفرهمائي اوله توانن

مك بارڠسياف يڠ هندق بربواة دي مك دفنجمن فد توانن اتو دسيوان كمدين جكلو بركهندق توانن دكمباليكنن اكندي.

دان جكلو اي مڠهندقكي سكالي اكدي سفرة بدڠ دبلين كفد توانن مك هدقله

Pada menyata-kan sagala tanah per-huma-an yang tiada di-per-huma-i uleh tuan-nia. Maka barang siapa yang handah ber-buat dia maka di-pinjam-nia pada tuan-nia atau di-sewa-nia kemdian jikalau ber-kahandak tuan-nia di-kembali-kan-nia dia. Dan jikalau iya meng-handak-i sakali akan dia saperti bendang di-beli-nia kapada tuan-nia maka handak-lah kamu

[Acquisition of Proprietary Right. Adjacent Owners to share in Water privileges. *Perak Code.*]

The law regarding the clearing of forest-land which has not been taken up for *huma* cultivation. Such land becomes the property of the person who clears it, subject to two conditions, first, he must be a Muhammadan;* secondly, the land must not be already in the possession of another person.

When such land is cleared, everything which may be upon it becomes the property of him who cuts down the jungle.

If there be a spring of water on the land which yields more water than is required by the proprietor for watering his plants, and for drinking purposes for himself and cattle, he must not refuse to permit those who live lower down to share in the use of it.

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[Acquisition of Land. Right to take up Waste Land. *Perak Code.*]

To declare the law on the subject of upland fields which are not cultivated by their owners. Should any one desire to cultivate land of this description, he must borrow it or rent it from the owner, and should the latter want it back at any subsequent time, it must be restored to him.

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* So, in former times, English law denied the possibility of rights over land to non-Christians.

As late as COKE'S time, it was the theory of English lawyers that an infidel or pagan could have no civil rights. Jews certainly had none before their expulsion by EDWARD I. Regulations were made for their government, and they were ultimately banished from the realm by the sole authority of the Crown; and they are expressly called the King's serfs in contemporary documents. In mediæval theory, no one not a Christian could be a real member of the State, and Christianity was one and indivisible.—POLLOCK, "The Land Laws," p. 17*n*.

كامو سكليين منولغ سكل سودار كامو يغ اسلام

ادفون فد سواة خير حكم رسم تانه يغنياد فرهماءي اوله توانن اية مك تياد سكالي٢ دافة دتكهكن اكن بارغسياف يغ هندق بربواة دي ملينكن تانه اية دلارغكن سبب هندق مغمبل منفعة درفدين اتو تانه يغدكت دوسنن

sakalian menulong sagala saudara kamu yang Islam. Adapun pada suatu khiar hakim rĕsam tanah yang tiada di-perhuma-i uleh tuan-nia itu maka tiada sakali-kali dapat di-tegahkan akan barang siapa yang handak ber-buat me-lain-kan tanah itu di-larang-kan sabab handak meng-ambil menafa'at deri-pada-nia atau tanah yang dekat dusun-nia.

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برمول مك تانه كمقوغ دان لادغ مك برفندة توانن فولغ كفد اورغبسر ماسيغ٢ كفد سوكوين جك تياد واريثن دان وكيلن جك لادغ تغكل ددافة مك دتبس اورغ تبغن كايو٢ن كمندين مك فولغله كفد رمبان سكلي٢ جاغن اغكو فربنتهكن اوله توان٢ سكليين كارن ناته فولغله كرمان سكلي٢ جاغن اغكو فربنتهكن اوله توان٢ فادغ اية فولغله كفد الله دان جاغنله دفربنتهكن يغ دمكين ايتوله كات عادت

Ber-mula jika tanah kampong dan ladang maka ber-pindah tuan-nia pulang kapada orang besar masing-masing kapada suka-nia jika tiada waris-nia dan wakil-nia jika ladang tinggal di-dapat maka di-tebas orang di-tebang-nia kayu-kayu-nia kemdian maka pulang-lah kapada rimba-nia sakali-kali jangan angkau per-bantah-kan uleh tuan-tuan sakalian karana tanah pulang-lah ka-rimba-nia sa-kali-kali jangan angkau per-bantah-kan uleh tuan-tuan padang itu pulang-lah kapada Allah dan jangan-lah di-per-bantah-kan yang damikian itu-lah kata 'adat.

Should a person desire to acquire such land out-and-out in the same manner as wet rice-land, he must buy it from the owner. And ye must all give assistance to your brethren in Islam [in permitting the occupation of any spare land by such as may require it].

According to an accepted opinion of the judges as to the custom regarding lands lying uncultivated, no one has any right whatever to oppose the appropriation of such waste land by any one who desires to cultivate it, unless the owner himself is going to turn it to some advantage, or unless it is land adjacent to his holding, in either of which cases objection may be made.

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[Forfeiture of Proprietary Right upon Abandonment. *Menangkabau Code.*]

If the owner of a plantation *(kampong)* or farm *(ladang)* removes [and abandons it], the land reverts to the Chief of his tribe *(suku)* if he have no heirs or representatives.

In the case of a farm which has been abandoned, that is to say, where a man has felled and cleared forest-land and then has allowed his property to go back to jungle, ye must by no means permit any opposition on the part of the former cultivator to its appropriation by another, for it is land which has reverted to jungle. Ye must not suffer the former owners to dispute possession, for the field has gone back to God, and custom declares that there shall be no such dispute.

فد مڤتاكن حكم تانه فرهومائن اتو بندا ڠ ادفون تانه ايۃ اتس دوا بها كي سوات تانه هيدڤ كدوا تانه ماتي ادفون تانه ماتي ايۃ تياد تندا علامة سسوات سياڤ يڠ فوڤ حق كارن يڠ فوڤ دوسن ايۃ هندقكن حاصيل نسچاي تياداله لا كي فركائنڤ فد تانه ايۃ مك جيك دفربوات اوله سسوڠ هوما اتو ساوه بندا ڠ مك تياداله دافة بارڠسياڤ بوكات٢ لا كي كرن سوده دسوكا كن يڠ فوڤ دوسن ادفون يڠبرنام تانه هيدڤ ايۃ ددودقكي اورڠ دتانمي فوكوڠ كايو٢ن دان بوه٢هن سرة دفربواتن كمفوڠ هلامن تمفة ايۃ مك تياداله بوه دامبيل اوله سسوڠ ايتله دنمائي تانه هيدڤ دان دمكين لا كي سكل اورڠ يڠ دودق ددالم تانه اورڠ اتو دوسن اورڠ مك هندقله دي مڠيكوت فرنته دان جيك دي ملاون كفد يڠامفوڤ تانه اتو دوسن اتو يڠدتوانكنڤ مك دحكم سفوله تاهيل سفها مك هندقه سكل ايسي تانه ايۃ مپرتاء توانن ايۃ دمكين لا كي دقياسكن فد حكم قانون ادفون جيك دفربوات اوله سسوڠ دوسن مك جادي دوسن ايۃ سكل يڠدتانمن جيك ددعوا اوله امفوڤ تانه مك دبها كيله ا كن هركاڤ تانه ايۃ سبها كي كفد يڠ فون تانه دوا بها كي فد يڠ منانم بهارو دان دمكين لا كي جيك دفربوات ساوه بندا ڠ ايله

Pada menyata-kan hukum tanah per-huma-an atau bendang ada-pun tanah itu atas dua bahagi suatu tanah hidop ka-dua tanah mati ada-pun tanah mati itu tiada tanda ‘alamat sa-suatu siapa yang punia hak karana yang punia dusun itu handak-kan hasil naschaya tiada-lah lagi per-kata-an-nia pada tanah itu maka jika di-per-buat uleh sa-sa’orang huma atau sawah bendang maka tiada-lah dapat barang siapa ber-kata-kata lagi karana sudah di-suka-kan yang punia dusun ada-pun yang ber-nama tanah hidop itu di-duduk-i orang di-tanam-i pokok kayu-kayu-an dan buah-buah-an serta di-per-buat-nia kampong halaman tampat itu maka tiada-lah buleh di-ambil uleh sa-sa’orang itu-lah di-nama-i tanah hidop dan damikian lagi sagala orang yang duduk di-dalam tanah orang atau dusun orang maka handak-lah dia meng-ikut parentah dan jika dia me-lawan kapada yang ampunia tanah atau dusun atau yang di-tuan-kan-nia maka di-hukum sa-puloh tahil sa-paha. Maka handak-lah sagala isi tanah itu menyerta-i tuan-nia itu damikian lagi di-kias-kan pada hukum kanun ada-pun jika di-per-buat uleh sa-sa’orang dusun maka jadi dusun itu sagala yang di-tanam-nia jika di d‘awa uleh ampunia tanah maka di-bahagi-lah akan harga-nia tanah itu sa-bahagi kapada yang punia tanah dua bahagi pada yang menanam baharu dan damikian

[Proprietary Right. What Land may be appropriated and made the subject of Proprietary Right. *Malacca Code.*]

To declare the law relating to upland clearings and paddy-land. Land for these purposes is of two kinds, the first is *tanah hidop,* (live land), and the second is *tanah mati* (dead land). *Tanah mati* is that on which there is no sign or token that it has been appropriated by any one, or any grove of fruit-trees in respect of which a proprietor can demand a payment. Regarding such land it is certain that there can be no question. If any person proceeds to plant upland or wet *padi* on such land, no one has any right to dispute it with him for it has been abandoned voluntarily by its former owner.

Land which is known as *tanah hidop* is that which is appropriated by some one, either by living on it or by planting timber or fruit-trees or by laying out a garden or enclosure. This cannot be taken by anyone and is called *tanah hidop.* This rule applies also to persons who settle on the lands or plantations of others. As long as they live there, they must obey the orders of the owner, and if they oppose him, they may be fined ten *tahils* and one *paha.** It is the duty of all the persons who live on the land to support and co-operate with their lord, a rule which is also laid down in the *Hukum Kanun.*†

If a person plants an orchard (on the land of another) and his trees grow up successfully, and a complaint is lodged by the owner of the land, the value of the land shall be divided into three equal parts, one third shall be paid to the owner of the land, and

* 1 *tahil*=$8.
4 *paha*=1 *tahil.*

† A separate Code. It would be interesting to ascertain whence the Malays borrowed the Greek word κδνών or Latin *Canon.*

عادتڤ دان جيك دفربوات هوما اتو لادڠ اكن تانه يڠ همفا ايت تياد دڠن ستاهو توانڤ مك ددعواڤ اوله يڠ فوڤ دي بوله دافة دان جكلو دكاهيڤ جوك ملينكن ددندا اكندي سفوله امس جيك دتڠكلكن اوله توانڤ مك دفربوات اوله سسوڠكبون اتو بارڠسا كيڤ مك ددندا اوله حكيم اكندي ستاهيل سفها كرن اي مڠكاكه حق امفوڤتانه اية دان جكلو دڠن سوكامفوڤ تانه اية تيادفركتاءن ددالمڤ ايتله حكم تانه يڠ هيدف تتفاه حكم اية كرن دفاكي ددالم نكري اتو دوسن اتو سكل تاق رنتو سكلين اداڤ. انتهي

lagi jika di-per-buat sawah bendang itu-lah ‘adat-nia dan jika di-per-buat huma atau ladang akan tanah yang hampa itu tiada dengan sa-tahu tuan-nia maka di-d‘awa-nia uleh yang punia dia buleh dapat dan jikalau di-gagah-i-nia juga melain-kan di-denda akan dia sa-puloh amas jika di-tinggal-kan uleh tuan-nia maka di-per-buat uleh sa-sa’orang kabun atau barang sa-bagei-nia maka di-denda uleh hakim akan dia sa-tahil sa-paha karana iya meng-gagah hak ampunia tanah itu dan jikalau dengan suka ampunia tanah itu tiada per-kata-an di-dalam-nia itu-lah hukum tanah yang hidop tetap-lah hukum itu karana di-pakei di-dalam negri atau dusun atau sagala telok rantau sekalian ada-nia antahi.

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فد مڤتاكن حكم اورڠ ممبوات هوما اتو لاداڠ يڠ بهارو دتبس تبڠ مك دبا كرڤ اوله سسوڠكڠ جكلو اي هاڠوس تياادله منجادي فركتاءن دان جكلو تياد هاڠوس مك هندقله اورڠڠڠ ممباكراية دسورة ممرون ستڠه لاداڠ اية دان چيك لاداڠ اية اورڠ بسرة امفوڤ دي ملينكن دفرونڤ سمفي هابيس سده سكالي دان جيك ممبوات هوما

Pada menyata-kan hukum orang mem-buat huma atau ladang yang baharu di-tebas-tebang maka di-bakar-nia uleh sa’orang jikalau iya hangus tiada-lah men-jadi per-kata-an dan jikalau tiada hangus maka handak-lah orang yang mem-bakar itu di-suroh memĕrun sa-tengah ladang itu dan jika ladang itu orang besar-besar ampunia dia me-lain-kan di-pĕrun-nia sam-pei habis sudah sakali dan jika mem-buat huma ber-kawan-

two-thirds to him who has made the plantation. The same is the rule in the case of rice-fields, laid out by a person on the land of another. But if a man makes a clearing [for a farm of upland *padi* and vegetables] on the waste land of another without the knowledge and consent of the latter, who thereupon complains, the owner of the land shall get it and if the trespasser persists, he shall be fined ten *amas*.*

If the land is left by the cultivator, and another comes and makes a plantation thereon, or otherwise cultivates on it, the latter shall be fined by the judge one *tahil* and one *paha* for he has forcibly encroached upon the rights of another. If it is the owner of the land who does this, there is, of course, nothing to be said. Such is the law regarding *tanah hidop*, and it is firmly established and followed both in towns and in the country and in all districts and divisions of the State.

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[*Huma* or *Ladang* land. Customary Rules as to fencing and as to the simultaneous burning of a general clearing. *Malacca Code.*]

To declare the law regarding up-land farms and clearing. If the newly-felled timber on such a clearing is fired by some one and is successfully burned, there is nothing to be said. But if it is not burned off, the person who set fire to it must be ordered to lop and pile the branches on half the clearing, or, if it should belong to a Chief, on the whole clearing. If a number of persons clear land in concert, and when each has felled his portion, one of them of his own individual motion and without any general

* 1 *mas* or *amas*=1 *mayam*=$\frac{1}{8}$th of the weight in gold of a Spanish dollar ?

برکاون٢ تاه همفيرله تباڠن ماسيڠ٢ مك تيباا٢ دباکرڤ دڠن سؤرڠڤ ديري تياد دڠن موافقة يڠ رامي مك تربا کرهوما اورڠيڠ باڤق ايتفون دمکين جوکا حکڤ دان جکلو ممبا کرهوما سکل اورڠ باڤق سده ممبا کر مك تڠکلله اي سؤرڠ تياد تقصير اکن تنافي جيك سکل فادي اورڠ اية دما کن بابي اتوکربو مك مڠکنتي اي سبب کرن تقصير تياد اي ممفا کردان جيك هابيس دما کن بناتڠ سموا٢ن ملينکن دمکينله جوڠ دحکمکن اتسن انـــهے.

kawan telah hampir-lah tebang-an masing-masing maka tiba-tiba di-bakar-nia dengan sa'orang-nia diri tiada dengan muafakat yang ramei maka ter-bakar huma orang yang baniak itu pun damikian juga hukum-nia dan jikalau mem-pagar huma sagala orang baniak sudah mem-pagar maka tinggal iya sa'-orang tiada taksir akan tetapi jika sagala padi-padi orang itu di-makan babi atau kerbau maka meng-ganti iya sabab karana taksir tiada dia mem-pagar dan jika habis di-makan benatang samua-nia melain-kan damikian-lah juga di-hukum-kan atas-nia antahi.

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فد مڤتاکن حکم رسم سکل اورڠ يڠمرتانم٢من فراوله کاموا کن فاکردان فارية جاڠن تقصير منوڠکوي دي.

سبرمول تانم٢من اية انس دوا فرکارا

سواة تنامن اية اد برفاکر جيك ماسق کربو انو لمبو جکلو ترتيکم فد مالم مڤيله بناتڠ اية سبله ٢هرکان تنافي فد قول يڠ صح مڤيله سموان هرکان مك تنمن اية دسيله اوله يڠ امفون بناتڠ.

Pada mengata-kan hukum rĕsam sagala orang yang ber-tanam-tanam-an per-uleh kamu akan pagar dan parit, jangan taksir menunggu-i-dia.

Sabermula tanam-tanam-an itu atas dua perkara suatu tanam-an itu ada ber-pagar jika masok kerbau atau lumbu jikalau ter-tikam pada malam menyilih benatang itu sa-bĕlah harga-nia tetapi pada kaul yang sah menyilih samua-nia harga-nia maka tanam-an itu di-silih uleh yang ampunia benatang.

agreement sets fire to his portion and the fire extends to the land of the others, the same law is to be followed. And if the persons interested in the clearing set up a fence round it, and, though most of them fence their respective portions, one person neglects to do so, this is no offence; but if, owing to such neglect, the crops of the others are eaten by pigs or buffaloes, he shall make good the loss, for it was by his neglect in not fencing that it occurred, and if the whole crop is devoured by animals the same law is to be observed.

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[Obligation to fence. Cattle-trespass. *Perak Code.*]

To declare the customary law regarding the duties of the owners of growing crops. Ye must all have fences and ditches [round your holdings] and must not neglect to watch them.*

Growing crops are of two kinds. First, those which are fenced in. In the case of these, if a buffalo or ox effects an entry and be stabbed at night [by the owner of the crop or his people], the latter must make good half of the value of the beast. But according to another sound doctrine, the full value of the beast must be made good (by the crop-owner) and the value of the damaged crop must be made good by the owner of the beast.

* "The prevalence of this practice (the enclosure of cattle in fences), and the care with which fencing is universally attended to, is the best evidence of the value set upon land by a dense population. Their perception of the rights of property. and their desire to maintain and respect them, are amply attested by their many arrangements to restrain the trespass of cattle. On the other hand, one of the most serious annoyances with which the planters of the South have had to contend, both on their Coffee and Sugar Estates arises from the notorious indifference of the Kandyans and Singhalese in this particular, and their disregard of all precautions for securing their buffaloes and bullocks by day or by night." TENNENT'S "Ceylon," II, 532.

كدوا تنامن ايۃ تياد برفا كر جك دتيكم فد مالم مڤيله سموان يڠ امڤون تنامن ايۃ دان تيادالہ دسيلهن اوله يڠ امڤون بناتڠ ا كن تنامن ايۃ جكلو سيڠ ترتيكم سا٘فولڠ دوا حكمن ملينكن جكلو سده مشهور جاهتن كربو ايۃ سهڠگ مڤيله سبله هركان جوك دان تنامن ايۃ دسيله فول اوله يڠامڤون كربو

Ka-dua tanam-an itu tiada ber-pagar jika di-tikam pada malam menyilih samua-nia yang ampunia tanam-an itu dan tiada-lah di-silih-nia uleh yang ampunia benatang akan tanam-an itu.

Jikalau siang ter-tikam sa-pulang-dua hukum-nia melain-kan jikalau sudah masahur jahat-nia kerbau itu sa-hingga menyilih sa-bĕlah harga-nia jaga dan tanam-an itu di-silih pula uleh yang ampunia kerbau.

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فد مڤتا كن حكم بوه٢هن ددالم كمفوڠ اورڠ اتو ددالم كوت نكري ادفون جيك تياداي ممبها كيكن بوه ايت اكن توانن دماكنن برسما٢ جكلودجوالن بواهن ايت مك دفتا هركان سفرتك دوا بها كي فد امڤون كمفوڠ سبهاكي اكن توانن لام دان جك اي تياد ماهو ممبري مگ ماره اي لالو دتبڠن فوكوء ايت مگ مڠادف امڤون فدحكيم مگ دسوره حكيم بايرهركان فوكوء ايت بكيمان عادت سكل فوكوء كايو٢ن ڠددالم كمفوڠ اورڠ دا كن سكل بواه٢هن ايتڤون مان عادتن يڠ سفرتيك جوكا دان جكلو دجوالن اوله امڤون كمفوڠ ايۃ دافة ددعوان اوله يڠ امڤون لام ملينكن يڠتياد ادفركتائن لاكي

Pada menyata-kan hukum buah-buah-an di-dalam kam-pong orang atau di-dalam kota negri ada-pun jika tiada iya mem-bahagi-kan buah itu akan tuan-nia di-makan-nia ber-sama-sama jikalau di-jual-nia buah-nia itu maka di-pinta harga-nia sa-per-tiga dua bahagi pada ampunia kampong sa-bahagi akan tuan-nia lama dan jika iya tiada mahu mem-bĕri maka marah iya lalu di-tebang-nia pokok itu maka meng-adap ampunia pada hakim maka di-suroh hakim bayar harga-nia pokok itu bagei-mana ‘adat sagala pokok kayu-kayu-an yang di-dalam kam-pong orang di-akan sagala buah-buah-an itu pun mana ‘adat-nia yang sa-per-tiga juga dan jikalau di-jual-nia uleh ampunia kampong itu dapat di-d‘awa-nia uleh yang ampunia lama me-

The second kind of growing crop is that which is not fenced in. In the case of land of this kind, the value of a beast stabbed at night in the act of trespassing must be made good in full by the owner of the crop, and there is no obligation upon the owner of the beast to make good the value of the damage done by it.

Should a beast be stabbed [trespassing] in daylight, the rule is that twice its value must be paid, except in the case of a notoriously vicious buffalo,* only one-half of the value of which need be paid, and the owner of which must make good the damage to the crop.

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[Superior and Inferior Rights. *Malacca Code.*]

To declare the law regarding the fruit of trees growing in the *kampong* of another or in the capital town, if the proprietor (of the trees) does not give a share of such fruit to the owner of the land, so that they may enjoy it in common, but on the contrary sells such fruit (for his own benefit), one-third of the value thereof may be demanded, that is to say, two shares go to the proprietor of the *kampong* and one share to the owner of the land. If the former will not give it, but in his anger cuts down the trees and the land-owner presents himself before the judge for redress, the judge must order the value of the trees to be paid in accordance with the customary price of all fruit-trees growing in the *kampong* of others, and in like manner fruit must be appraised, the above custom of dividing in thirds being observed, and if it is sold by the proprietor of the *kampong* the owner of the ancient right to the land has the right to sue.

* Compare the rule of English law as to animals of a known vicious disposition. *Cox* v. *Burbidge*, 13 C. B. N. S. 430,

هپاله كمڤوڠ اتو دوسن يڠدانكرة درفد راجا منتري اكن سسوڑڠ ادفون سفرت بندهارا
دان اورڠ بسر٢ ممبر ي كمڤوڠ اكن سسوڑڠ دڠن تياد تاهو دافة سمڤي بركات اكن
حالن مريكئية كفد راج ادفون جكالو دامبل كمڤوڠ اورڠ اتو درسن سوڑڠ٢ بسر٢
مڠ دبريكنن كفد سسوڑڠ مڠ اوله امفون كمڤوڠ اية دفرسمبهكنن كفد راج مڠ
راج فون برتيته اية فون تياد دافت ددعوا لاكي اولها مفون كمڤوڠ ايةكرن سده دڠن
ستاهو راج انتهـــي

lain-kan yang tiada ada per-kata-an lagi hania-lah kampong atau dusun yang di-anugraha deri-pada raja mantri akan sa-sa'orang ada-pun saperti bandahara dan orang besar-besar mem-bĕri kampong akan sa-sa'orang dengan tiada tahu dapat sampei ber-kata akan hal-nia marika itu kapada raja ada-pun jikalau di-ambil kampong orang atau dusun sa'orang-orang besar-besar maka di-bĕri-kan-nia kapada sa-sa'orang maka uleh ampunia kampong itu di-per-sembah-kan-nia kapada raja maka raja pun ber-titah itu pun tiada dapat di-d'awa lagi uleh ampunia kampong itu karana sudah dengan sa-tahu raja antahi.

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فد مڤتا كن حكم اورڠ بركادي دوسن مڠ بركادي اية دواڤركارا سوات هارس كدوان
كدا هارس ادفون سفرت سوڑڠ بركادي دوسن كفد راج اتو اورڠ كمڤوڠ يڠ اد تنامنن
مك تياد بربوه فد يڠ ممكڠ كمدين اية سلما٢ن اي ممڬڠ اية مك ببراف تاهن
دنتيكنن تياد جوا بربواه مك دافت دكندكنن اوله يڠ امفوڤ امس اية ادفون يڠتياد
دافة دكندكنن اية دوسن كلاف فينڠ اتو بارڠسباكيڤ تياداله بوله دكدكنڤ حكمن

Pada menyata-kan hukum orang ber-gadei dusun maka ber-gadei itu dua per-kara suatu harus ka-dua-nia ganda harus ada-pun saperti sa'orang ber-gadei dusun kapada raja atau orang kampong yang ada tanaman-nia maka tiada ber-buah pada yang memegang kemdian itu salama lama-nia iya memegang itu maka be-bĕrapa tahun di-nanti-kan-nia tiada jua ber-buah maka dapat di-ganda-kan-nia uleh yang ampunia amas itu ada-pun yang tiada dapat di-ganda-kan-nia itu dusun kelapa pinang atau barang sa-bagei-nia tiada-lah bulih di-ganda-kan-

A case in which there can be no question at all (as to the right of the land-owner) is the case of a *kampong* (orchard or plantation) or *dusun* (grove or *tope*) which is granted by the Raja or Mantri to an individual. Regarding the Bandahara and Chiefs, however, if one of them grants a *kampong* to a person and nothing is known of it by the Raja until the case of the cultivating-proprietor is represented to him, or if any Chief takes the *kampong* or *dusun* of any person and grants it to another and the proprietor represents the matter to the Raja and the Raja confirms the grant, the proprietor of the *kampong* has no further cause of action, for the thing has been done with the knowledge of the Raja. The end.

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[Hypothecation of Land. Recovery of Land, &c., wrongfully taken. *Malacca Code.*]

To declare the law regarding the hypothecation of *dusuns* (groves of fruit-trees). Now hypothecation is of two kinds, the first is *harus* ("lawful"), the second is *ganda harus* ("lawful to double").

If a man hypothecates a *dusun* (grove of fruit-trees) or a *kampong* planted with fruit-trees to the Raja, and the trees do not bear fruit while in the possession of the bailee during the whole time of his possession, even though he wait for years, the creditor may claim double his money.

Property in respect of which this doubling cannot take place is a grove of cocoa-nut or betel-nut or other similar trees. The law is that *ganda* does not apply to these, and should the creditor claim it, in-

دان جيك دكداكن مك دبري تاهوكفدحكيم مك حكيمله جادي لاونپ جيك اي مندافة بارغسا كين بندا يغ غريب كفد كمفوغ اورغيغ دفكغكنن اية دبهاكي سفرتيك عادت دان سبهاكي فد يغ ممكغ كادي اية دوا بهاكي فد امفوپ كرن لاكي اي منغكو دتمفة اية دان دمكين لاكي كمفوغ يغدانكرة اكن اورغبسر٢ جكلو اي مندافة سسواة فندافاتن دبهاكي دوا فد يغ امفوپ سبهاكي دان كفد يغ مندافة سبها كي دمكينله حكمن ادفون حكم دوسن دوا بهاكي اوله سوؤرغ يغتياد برهوتغ مك دماكنن بوهپ دان دجوالن مك داتغ توانن بوله ددعواپ دان دمكين لاكي سكل اورغيغ دمركاي اوله را ج٢ مك لاري اي فد نكري لاين سبب تاكوتن. حتـــي مك دوسن اتو كمفوغن دتغكلكنپ تيبا٢ دامبيل اواله اورغئيت فون بوله ددعواپ فد كمدين هاري كرن حقن نسچاي دكمباليكن اوله حكيم اداپ.

nia hukum-nia dan jika di-ganda-kan maka di-bĕri tahu kapada hakim maka hakim-lah jadi lawan-nia jika iya men-dapat barang sa-bagei-nia benda yang ghraib kapada kampong orang yang di-pegang-kan-nia itu di-bahagi sa-per-tiga ‘adat dan sa-bahagi pada yang memegang gadei itu dua bahagi pada ampunia karana lagi iya menunggu di-tampat itu dan damikian lagi kampong yang di-anugraha akan orang besar-besar jikalau iya men-dapat sa-suatu pen-dapat-an di-bahagi dua pada yang ampunia sa-bahagi dan kapada yang men-dapat sa-bahagi damikian-lah hukum-nia ada-pun hukum dusun dua bahagi uleh sa’orang yang tiada ber-hutang maka di-makan-nia buah-nia dan di-jual-nia maka datang tuan-nia buleh di-d‘awa-nia dan damikian lagi segala orang yang di-murka-i uleh raja-raja maka lari iya pada negri lain sebab takut-nia. Hata maka dusun atau kampong-nia di-tinggal-kan-nia tiba-tiba di-ambil uleh orang itu pun buleh di-d‘awa-nia pada kemdian hari karana hak-nia naschaya di-kembali-kan uleh hakim ada-nia antahi.

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فري حكم برسيوا كن بوم.

افبيل دبرين اوله سسؤرغ لاكي٢ دبوبه فد سسوؤرغ دسورهن برهوما مك

Pri hukum ber-sewa-kan bumi. Apa-bila di-bĕri-nia uleh sa‘orang laki-laki di-buboh pada sa‘orang di-suroh-nia ber-

formation may be given to the judge, who shall oppose it. If the creditor finds any concealed property of value upon the land of the debtor which is held by him in hypothecation, the custom is that it shall be divided in three equal shares, one of which shall go to the holder of the mortgaged land, and two to the proprietor, for the finding has taken place while the creditor is in possession of the land. The same principle applies to land bestowed by the Raja upon Chiefs. If anything is found thereon, it must be divided in two equal shares, one of which goes to the owner of the land and the other to the finder. This is the law.

Now regarding *dusun* there are two regulations, first in the case of a man to whom no debt is due, but he nevertheless eats the fruit of the *dusun* and sells it; in such a case, if the owner appears, he has a right of action. So in the case of persons who have incurred the displeasure of their Rajas and flee to other countries out of fear for their safety, abandoning heir *dusun* or *kampong*, which are forthwith taken by others. In their case also, the rightful owners may sue in after days, for the property is theirs and shall certainly be restored to them by the judge. The end.

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[Sub-letting. A stated rent necessary. *Perak Code*].

The law regarding the renting of land. If land be made over by a man to another, the latter being put in to cultivate it on the condition that he receives

فرنجيننن سسوكو درفد تانه فرهومائن ايت اكن اوفهن مك تياداله هارس جك دسيواكنن دڠن امس اتو فيرق اتو مكانن دتنتوكنن هارسله.

huma, maka per-janji-an sa-suku deri-pada tanah per-huma-an itu akan upah-nia ; maka tiada-lah harus jika di-sewa-kan-nia dengan amas atau perak atau makan-an di-tuntu-kan-nia harus-lah.

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فري حكم اورڠيڠ مڤيوا رومه مك افكل بناس دڠن سسواة سبين مك اورڠ مڤيوا ايةٔ مڤيله.

جكلو هندق دبناسكنن فرنجيننن مك دفتاءڤله كمبالي اكن سابه سيواڤ ايةٔ امڤامن سسوڑڠ مڤيوا رومه جنجين سفوله بولن سراتس تيمه مك ددياميين سبولن رومه ايةٔ رنتوه اتو بناس دكيرا٢كن سبولن سفوله تيمه دان يڠ سمبيلن فوله ايةٔ دفتاءڤله كمبالي جك اي بركنن ديم لا كي دروميه ايةٔ دسو رهڤله فريكي كارن سيواڤ تله دبايرڤ ترلبه دهول.

مثل- جكلو بلوم دبري سيواڤ بتاف حكمن. افكل اي اڠكن مڠديامي دبايرڤله سيوا يڠتله لالو دان جيك اي هندق مڠديامي تمفة ايت جوك دسو رهڤله فربايقكي دان دبايرڤ سيوا يڠاد لا كي فداڤ ايةٔ.

Pri hukum orang yang menyewa rumah maka apa-kala binasa dengan sa'suatu sabab-nia maka orang menyewa itu menyilih.

Jikalau handak di-binasa-kan per-janji-an maka di-pinta-nia-lah kambali akan sa-bĕlah sewa-nia itu-umpama-nia sa'orang menyewa rumah janji-nia sa-puloh bulan sa-ratus timah maka di-diam-i-nia sa'bulan rumah itu runtoh atau binasa di-kira-kira-kan sa'bulan sa'puloh timah dan yang sambilan puloh itu di-pinta-nia-lah kambali. Jika iya ber-kenan diam lagi di rumah itu di-suroh-nia-lah per-baik-ki karana sewa-nia telah di-bayar-nia ter-lebih dahulu.

Misal jikalau belum di-bĕri sewa-nia betapa hukum-nia ? Maka apa-kala iya anggan meng-diam-i di-bayar-nia-lah sewa yang telah lalu dan jika iya handak meng-diam-i tampat itu juga di-suroh-nia-lah per-baik-ki dan di-bayar-nia sewa yang ada lagi pada-nia itu.

one quarter of the produce as compensation for his trouble, such an agreement is not lawful. But if the land be let out in consideration of gold, or silver, or food, the amount of which is determined, this is lawful.

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[Lease of House Property. House at risk of owner. *Perak Code.*]

The law affecting the tenants of houses. If the house is destroyed by the fault of the tenant he must make good its value.

Should the tenant desire to put an end to the agreement, he may demand that a proportionate part of the rent shall be returned to him. For instance, a man rents a house on the undertaking that he shall pay one hundred catties of tin for ten months; he resides there for one month, and then the house falls down, or is otherwise destroyed; in this case, ten catties of tin must be allowed for the one month of occupation, and he may demand that the remaining ninety catties shall be returned to him. If he likes to continue to live in that house, he can call upon the owner to repair it for him, for he has paid in advance.

The case may be put, "if the rent has not been paid beforehand what will the law be?" The answer is, at the time that he refuses to live in the house any longer, he must pay rent for the term that has already expired; or if he still desires to go on living in the place, he may call on the owner to repair and must pay all rent which subsequently becomes due.

فري حكم بندا يڠ سكوتو بوم دان سكل فربواتن دان سكل فوهن كايو مڠيكوة بوم ايا

برمول افبيل دجوالن اوله سسوڠ درفد دوا ايت اكن بندا يڠ سكوتو ايت كفد اورڠ لاين مك دبليله اوله يڠ سكوتو ايت كفد جوالن ايت تياد هارس دجوالن فد اورڠلاين.

مك جكلو برسلاهن فد قدرڤ بندا ايت اتو فد هركاڤ مك اورڠيڠ ممبلي ايا برسمفه.

مك جكلو ترلمبت دتنتوتن درفدڤ ملينكن عذرڤ بناس حكم بندا يڠ سكوتو ايا برمول جك سسوڠ سكوتو ايا سوك منجوال كفد لاين اورڠ دان يڠ سوڠ تياد ميوكا كن مك دامبلپله سكلين بندا ايا اتو دتڠكلكن اوله يڠتياد ممفركنكن ايا.

Pri hukum benda yang sakutu bumi dan sagala per-buat-an dan sagala pohon kayu meng-ikut bumi itu.

Ber-mula apa-bila di-jual-nia uleh sa'orang deri-pada dua itu akan benda yang sakutu itu kapada orang lain. Maka di-bĕli-lah uleh yang sakutu itu saperti jual-an itu tiada harus di-jual-nia pada orang lain.

Maka jikalau ber-salah-an pada kadarnia benda itu atau pada harga-nia maka orang yang mem-bĕli itu ber-sumpah.

Maka jikalau ter-lambat di-tuntut-nia deri-pada-nia me-lain-kan 'uzur-nia binasa hukum benda yang sakutu itu.

Ber-mula jika sa'orang sakutu itu suka men-jual kapada lain orang dan yang sa'orang tiada menyuka-kan maka di-ambil-nia-lah sakalian benda itu atau ditinggal-kan uleh yang tiada mem-per-kenan-kan-nia itu.

The law regarding property which is held in common—land, and cultivation of all kinds and all fruit-trees which go with the land.

If any property so held in common be sold by one of two joint-proprietors to a third person, though the other joint-proprietor be willing to purchase it on the same terms, such a sale is illegal.

If there be a disagreement as to the nature of the property sold (*i.e.*, whether it is part of the joint-property or not), or as to the price of it, the purchaser must be put upon his oath.

But if there be delay in making the claim (on the part of a joint-proprietor whose interests have been prejudiced by the sale of some of the joint-property by another joint-proprietor to a third person), unless this be caused by ill-health, the law of joint-proprietorship shall cease to apply.

If one of two joint-proprietors is willing to sell joint-property to a third person, and the other is unwilling to do so, the latter must either take over the whole of the joint-property or must relinquish his interest in it to the other [at a valuation ?].

# APPENDIX II.

## CLAIMS OF IMPROPRIATORS. MALACCA LANDS.

*Tuesday*, 10*th October*, 1826.

The following European and Native Landed Proprietors were assembled this day at the Resident Councillor's Office for the purpose of enquiring into the particulars detailed below:—

B. De Wind, Esq.
J. B. Westerhout, Esq.
G. Koek, Esq.
A. Velge, Esq

The Captain of Malays:—

Aroom
Mahmat Tyre,
Loerien,
Booroe,
} Inchis.

M. de Souza was present by proxy in the person of his son.

Messrs. De Wit, D. Koek, and G. de Souza, the Captain Kling and Dosso Bindasa were requested to attend, but unavoidable circumstances detained them elsewhere.

The above meeting took place for the purpose of ascertaining the nature of the agreement subsisting respectively between the Government, the landed proprietors, the Penghulus (or intermediate officers between the landed proprietors and the tenants), and the immediate cultivators of the soil.

1.—Between the Government and the landed proprietors.

On a reference to the records in the Registrar's Office, it would appear that some grants expressly state the right of Government to resume the land, and all, so far as the inquiry has gone, seem to indicate an ultimate right of this nature.

The grantee, by the records, is generally supposed to receive the land under an engagement of clearing the same of jungle, and the right of resumption on the part of Government would seem to arise from the non-fulfilment of this expressed or implied duty on the part of the grantee.

In regard to this clause, implied or seemingly understood in favour of Government, the present proprietors state that, without

questioning the absolute right of Government on this point, they consider themselves as possessing in equity a full and inviolate title to their grounds, inasmuch as the land has been sold to, and handed over during a series of years to various individuals without any mention being made of such inherent reservation affecting their title. On being required to produce their title deeds and grants, the present landed proprietors can only show Bills of Sale. They state that all sales or transfers of land were made in the Court of Justice, which body detained all previous papers and deeds on delivering up the last Bill of Sale or Transfer, and that the Court did not intimate to them the reservation above, to which it was their duty to do, if such a right be recognised on the part of Government.

The proprietors acknowledge that they consider themselves bound, on the requisition of Government, to keep in repair all established bridges and roads running through the grounds, and to clean the banks and body of the river bordering on their estates from nuisances. But that all new roads are to be constructed at the expense of Government, who can carry such roads through any part of an estate, after intimating their intention to the immediate proprietors of the soil.

The proprietors acknowledge also, that in cases of emergency (if any such should occur), they are bound to provide for the peace of their respective estates by embodying a police from among their tenants.

2.—Between the landed proprietors and the Penghulus.

The appointment of Penghulus is not obligatory, but is left to the free will of the proprietor, being solely for his own convenience. On small estates there may be no intermediate officer. On estates somewhat larger, but possessing a paucity of tenants, there may be a *mata-mata*, who, under a more modest designation, is *de facto* a Penghulu, both in power and privilege. On estates possessing 15 or 20 houses, there is usually a Penghulu appointed. On extensive estates, there are several Penghulus, one being generally appointed for each respective quarter of an estate, which may incorporate parcels of ground of different names.

The Penghulu and Mata-mata are exempted from any tax or assessment on their property, and are supposed to settle all disputes of minor importance subsisting among the tenants. But this is by simple compromise, as they possess no judicial powers. They pay regard to the tranquillity of the estate, and are the medium of communication between the landed proprietors and the tenants.

The Penghulus are not Government Officers in any sense of the term, and prior to the British authority receiving over Malacca on 9th April, 1825, Government did not, in any respect, interfere with them. Since that period, the Penghulus have been compelled to appear in Court, to take an oath for correctly exercising their authority.

3.—Between the landed proprietors and the tenants.

The tenant settles on an estate by the verbal permission of the proprietor. There is no express law as to the rate of rent payable, but the custom in general is for the landlord to receive 10 per cent. upon all the produce of the soil, although, in some particular instances, so low as 6 per cent. has been accepted by way of encouragement. When spices or pepper are to be planted, there is usually a separate and sometimes a written engagement made, and no tithe is levied for the first 3 or 4 years.

During the Dutch administration, the inhabitants were not permitted to cultivate padi, and the produce of the estate consisted chiefly in fruits, wood and charcoal. Padi cultivation is however now extending in all parts. The tithe of padi, spices and pepper is usually received at the residence or stores of the cultivators, and in most cases this tithe is taken by estimation rather than by absolute measurement, which is found to be inconvenient. But the tithe of other articles is generally received in cash, after the same have been disposed of, and in case of apparent fraud, the sale must be traced, in order to ascertain the truth or error of such a suspicion. The land-holder possesses no right to establish his own mode of assessment or revenue, whether as to time, or place, or rate. In the collection of these tithes, some proprietors farm out their revenues, and others receive them through their own agents.

A tenant may sell, transfer, devise, &c. the portions of land he may cultivate, and he is free to cultivate the soil to any extent. He may quit the estate at his free pleasure. But the land-holder cannot force him off the estate without just cause of offence. When this exists, a proper time must be granted to the tenant to enable him to dispose of his property.

If such tenant appears dilatory in effecting his arrangements, the land-holder may assemble the Penghulus and elderly people as a committee of appraisement, and the land-holder paying the amount according to their estimate, can oblige the tenant to quit the estate.

If the tenant feels aggrieved with the conduct or the judgment of the Penghulu, he is to apply to his landlord, and in all cases,

without exception, where disputes or differences of opinion may subsist between the tenant and his landlord, which cannot otherwise be compromised, the appeal lies to Government.

*Wednesday, 11th October,* 1826.

As the nature of the landed tenures, so far as respects the relative right of Government and the landed proprietors, remains involved in some obscurity, the following order was issued, and it is believed that the question at issue will be satisfactorily elucidated when the Register required in this order may be completed.

With a view to ascertain the precise nature of the landed tenures, so as to complete the information which was yesterday elucidated at a meeting of the principal landed proprietors, the Dutch Translator is requested to examine the records in the office of the Registrar, who is to assist in the said enquiry, and extract from thence the particulars necessary to fill up an Abstract Registry of the following form :—

*Abstract Registry of the Grants of Land made by Government from the earliest periods to the Inhabitants of Malacca.*

| No. | Date of Grant. | Names of Grantee. | Names and Extent of Land granted. | Resumption by the Letter. | Resumption not stated. | Right of Resumption cut off by Letter. | Dates and Impositions. | Remarks. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

The Land Surveyor will also draw up a draft of the Territory of Malacca, grounded upon the map in the Resident's office. In this draft, the Land Surveyor will trace, in double lines, the several divisions according to the original grants of Government and with Roman letters will refer to the foot of the map, or to an appended Schedule, exhibiting the dates of the original grants, names of the grantees, and other particulars as set forth in the Register to be completed by the Dutch Translator as above directed. The Land

Surveyor will then trace off, with colours only, the present distribution of territory, using numbers, in lieu of Roman letters, for references as above.

As this Register and the map are to be be submitted to the Hon'ble the Governor, the period of whose arrival is very uncertain, the Dutch Translator and Land Surveyor are requested to exercise such practicable expedition as may be compatible with a clean elucidation of the points in question.

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*Extract from a Minute by Mr.* FULLERTON, *Governor of the Straits Settlements, dated the 24th of November*, 1827.

All the papers connected with Lands of Malacca being under preparation for transmission to Bengal, I now record a minute to accompany them, being an abstract of past transactions in that department.

The Lands of Malacca extend along the coast of the Malay Peninsula 39 miles, their greatest breadth inland, without including Naning, 28 miles, containing square miles 654, or acres 418,560. Of this, 500 square miles, or acres 320,000, are capable of wet rice cultivation, and of which 500 acres are now supplied to be actually cultivated. Of the dry lands, acres 10,000 may be supposed to be planted with fruit trees, or in gardens, acres 88,560 waste and covered with forest.

The whole of the lands appeared to have been assigned over to certain of the inhabitants nearly one hundred years ago. On first enquiry and examination of the deeds held by the present proprietors as they were called, descendants of the first grantees, the Government were led to view them as absolute proprietors and owners of the soil at full liberty to rent and derive the utmost advantage from them. On a further enquiry, however, and the examination of the Dutch records, it was found that only the Government right of levying from the resident inhabitants a tenth of the produce had been granted to them, and Proclamations were discovered interdicting, under heavy penalties, the demand of any rent or tax beyond the tenth of the produce. The persons thus investing with the Government right, it appeared, took little pains to encourage or extend the cultivation. Residing at Malacca and never quitting the town, the right of levying the tax was sold annually to certain Chinese inhabitants, who appear to have exercised over the inhabitants the right of compulsory labour and a

degree of power inconsistent with the improvement of the country. In reality, as the exercise of Police functions seems to have been a part of the tenure, the whole authority over the country rested with a few Chinese contractors. In order to open to Government the means of direct management of the lands with a view of encouraging and extending cultivation, as well as maintaining due control over the inhabitants, the redemption of the Government right to the tenth from the persons called proprietors presented itself as a most desirable measure. The collections having been rented, and the renters supposed to gain considerably, it was calculated that, by agreeing to pay to the proprietors a sum, even a little exceeding that received by them at present, little, if any, immediate loss would be sustained, and the Government would, besides the levy of the tenth on the lands actually occupied, be entitled to dispose of the waste and derive a growing revenue from the gradual extension of cultivation and increase of produce, to a portion of which they would be entitled. A settlement was accordingly made with the proprietors, whereby Government agree to pay annually according to the list. In consideration of which, the proprietors agreed to make over to Government all right derived from previous grants given by the preceding Government, surrendering all such as were in their possession. More than a year having expired, the following is the result:—

*The total amount to be charged against the land.*

| | | | |
|---|---|---|---|
| First, payable to former Proprietors, | 16,270 | 0 | 0 |
| Second, Contingencies, ... | 145 | 5 | 9 |
| Third, Establishment, ... | 4,560 | 0 | 0 |
| | 20,975 | 5 | 9 |
| Collection, | 15,400 | 12 | 1 |
| Difference, | 5,574 | 9 | 8 |

R. FULLERTON.

*Statement of Lands lately taken by Government.*

| | | | |
|---|---|---|---|
| J. B. DE WIND, ... | 4,500 | 00 | |
| Heirs of A. KOEK, ... | 2,000 | 00 | |
| A. A. VELGE,... ... | 500 | 00 | |
| Mrs. WESTERHOUT, ... | 2,500 | 00 | |
| Heirs of DE COSTA, ... | 700 | 00 | |
| *Carried forward*, | 10,200 | 00 | |

| | | | |
|---|---|---|---|
| *Brought forward,...* | | 10,200 | 00 |
| Daniel Koek, | ... | 850 | 00 |
| Appa Kachil, | ... | 1,500 | 00 |
| Manuel de Souza, | ... | 400 | 00 |
| Mr. Westerhout, & Co., | | 450 | 00 |
| Intje Sourin, | ... | 170 | 00 |
| „ Arom, ... | ... | 300 | 00 |
| „ Sariah, | ... | 100 | 00 |
| Heirs of Samsoodin. | ... | 50 | 00 |
| Mr. Westerhout, (Malim), | | 150 | 00 |
| Intje Sadeah, (Bertam), | | 120 | 00 |
| Sewa Sangra, Chetty, | ... | 100 | 00 |
| Sedassuah, ... | ... | 750 | 00 |
| Mount & Co., | ... | 50 | 00 |
| Hadjee Aboobakar, | ... | 300 | 00 |
| Intje Ahmid & Co., | ... | 380 | 00 |
| „ Momet Hayer, | ... | 300 | 00 |
| „ Ahamidah, | ... | 100 | 00 |
| Total Sicca Rupees,... | | 16,270 | 00 |

A. M. BOND,
*Malacca, November 2nd*, 1829. *Assistant Resident.*

*List of Allowance to the Panghuloos stationed at the different parts in the Interior from 1st July to 30th June*, 1829.

| | | | | | |
|---|---|---|---|---|---|
| July, | 1828. | 18 Panghuloos at 10 Sicca Rs. per month, each | ... | 180 | 00 |
| August, | „ | „ ditto | ditto, ... | 180 | 00 |
| September, | „ | „ ditto | ditto, ... | 180 | 00 |
| October, | „ | „ ditto | ditto, ... | 180 | 00 |
| November, | „ | „ ditto | ditto, ... | 180 | 00 |
| December, | „ | „ ditto | ditto, ... | 180 | 00 |
| January, | 1829. | „ ditto | ditto, ... | 180 | 00 |
| February, | „ | „ ditto | ditto, ... | 180 | 00 |
| March, | „ | 21 ditto | ditto, ... | 210 | 00 |
| April, | „ | „ ditto | ditto, ... | 210 | 00 |
| May, | „ | 16 ditto | ditto, ... | 160 | 00 |
| June, | „ | „ ditto | ditto, ... | 160 | 00 |
| Total Sicca Rupees,... | | | | 2,180 | 00 |

A. M. BOND,
*Malacca, the 29th October*, 1829. *Assistant Resident.*

*Extract from a Letter from the Honourable the Court of Directors, dated 30th September*, 1829.

156. The investigations requisite for the adjustment of the landed tenures at Malacca have, we are happy to see, been satisfactorily performed, and the adjustment itself completed. The following are the points which have been ascertained:—

1*st.*—That the pecuniary claim of Government upon the soil, by the custom of the place, and of the neighbouring Malay States, amounted to one tenth of the produce.

2*ndly.*—That the persons called the proprietors, mostly Dutch colonists resident at Malacca, were merely persons to whom Government had granted out its tenth, and who had no other claims upon the produce, nor upon the occupiers, not founded in abuse.

3*rdly.*—That the occupiers, therefore, were the real proprietors of the soil.

4*thly*—That the Panghooloos were merely the Agents of Government, or of the persons called the proprietors, for collecting the tenth share, and performing certain duties of the nature of Police, attached by custom to the proprietorship.

157. We are extremely glad that you have baen able to effect, with the body of proprietors, an arrangement whereby they make over to you the whole of their rights, for the fixed annual payment, about equal to the present amount of their annual receipts. You propose to manage the lands directly on account of Government, employing the Panghooloos as Collectors and Police Officers. They are probably the most efficient instruments whom, in the present state of society at Malacca, you have it in your power to employ. They will, however, require a vigilant superintendence, and the more so since the administration of justice, as at present organised, does not afford to the cultivators so accessible or expeditious a means of redress in case of their sustaining any injury, as to dispense with the necessity of other securities.

158. You have reserved, as the privilege of Government, the absolute disposal of all lands hitherto unreclaimed, or which hereafter be suffered to run again into forest and remain unproductive for five years.

159. The limits of all lands occupied by individuals are to be, as soon as possible, determined by survey, and defined by Grants duly issued and registered. All future transfers of landed proper-

ty are likewise to be registered; all these arrangements are highly proper.

160. You have prepared a "Regulation for declaring the rights of the Government over the lands within the territories of Malacca and providing for the due collection of the Government share of the produce thereof." This Regulation, consisting of thirteen paragraphs, you have transmitted for the sanction of the home authorities. We have already separately expressed to you our approbation of most of the arrangements to which this Ordinance in intended to give effect. We have now to add, that it is worded with remarkable clearness and precision and the rights of Government and of the occupiers are exactly and at the same time concisely defined. We, therefore, in conformity with the provisions of the Act 53 Geo. III Chap. 155, hereby sanction, with the approbation of the Commissioners for the Affairs of India, the draft as a Regulation which you have submitted to us, and of which we have already transcribed the title; and we direct this Regulation be promulgated and enforced, on the receipt of this despatch.

A. M. BOND,
*Assistant Resident.*

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*Extract from a Minute by Mr.* FULLERTON, *dated the 29th January*, 1828.

In my minute of the 5th July, 1827, I entered into the consideration of the land tenures, but rather to record the apparent contradiction in terms or incompatibility of a supposed ownership of land with a right of levying no more than 10 per cent. of the produce, or without that of forbidding the occupancy of land except under such term as might be agreed on between parties. The main and express object of that minute was to excite further enquiries and draw forth further information on the subject apparently little understood. Mr. LEWIS has now made a further report, and has submitted two documents out of the records which lend to throw much light on the whole subject. I allude to the order issued by the Dutch Government in the year 1819 referring to one of 1773. These documents render clear the terms and understanding under which the persons denominated proprietors hold their lands. It expressly interdicts and prohibits proprietors from levying as a tax from occupants of land

more than one-tenth of the produce. From this it appears that the Government of the day gave up to the proprietors, not the absolute right or ownership over the land, but only the Government right over it, that is, the tax of one-tenth of the produce. As far as I can trace from every enquiry, it appears that along the whole Eastern Coast of the Bay of Bengal from the commencement of the Burmese Territories to Point Romania, the right of the Sovereign is supposed to consist of one-tenth of the produce.* The ownership of the land is originally vested in the King, by whom it is made over to subordinate occupants to cultivate and render productive, on the term of yielding a tenth of the produce of every article.† The object of the late Government in assigning to the persons designated as proprietors the right of levying a tenth, probably was to make it the interest of certain individuals to introduce, encourage and extend the cultivation of the lands. In some deeds those terms are expressly mentioned. How far that object has been attained will best appear by the former report of Mr. Lewis. It appears by that report, that of 1,400 square miles, only acres 5,653 are in cultivation. It appears that so far from the persons called proprietors taking any pains to that purpose, they never even visit these estates, that they do not even themselves collect their tenth, but rent it in the mass once a year to a China contractor by public sale, who, having only one year's interest in the country, extracts from it the utmost he can, and it appears not only from the report of Mr. Lewis, but my own enquiries, that an excess is sometimes levied beyond the tenth, moreover that services are required, and labour exacted, from the tenants; in short they are kept in a state of vassalage and servitude quite inconsistent with the encouragement of cultivation. The right of levying the Government rent carries with it all the rent power of the State. That right vested in the Dutch proprietors, by them transferred in the mass to Chinese, has established a power and influence in that class too great even for the Officers of Government to hold in check. The advantages, therefore, that would result from the redemption of the rights of Government are too obvious to require further illustration. The present proprietors are stated to be willing to part with their privileges on certain terms and conditions. According to my idea,

* I exclude that portion of the coast held by the Siamese Government. It is known that the Chief of Ligore takes in kind 40 per cent. of the produce, leaving to the cultivator bare subsistence.

† Here then we find, as in many parts of India, two distinct rights:—(1) The right to the Government tenth. (2) The right of occupancy vested in the subordinate tenant on their paying the tenth.

these should be settled on the principle of tendering them in the shape of an annual payment the full equivalent of which they now receive. That is to say, the proprietors should agree on their own behalf and that of their heirs to surrender and deliver up all rights, privileges and advantages, resulting from this present title, to Government, receiving in return a certain annual sum, payable as long as the British Government shall remain in possession of Malacca. It might have been expedient to have awaited the orders of the Hon'ble Court of Directors before such a measure was carried into execution, but it appears to me that the case admits of no delay. Unless immediate advantage be taken of the disposition evinced by the proprietors to part with their titles, the object may be entirely defeated, for it is impossible to say what complicated rights may arise, and come into judicial decision which may oppose difficulties to future arrangement. It is clear that, by agreeing to pay a sum equivalent to the present amount of their receipts, or even something more—the right being rented and a certain excess of profit, without reckoning undue exaction, must remain to the contractor, and which would, of course, be levied by the Officers of Government—no loss could occur. In support of such an arrangement, and to induce consent to such, it may be pointed out to the proprietors that, by their tenures, they are bound to perform certain services, which, though neglected by the late Government, will be required under our administration ; that in all old Grants the right of Government to impose a land tax is expressly reserved, is indeed inherent in every Government, and must, in all probability, be reverted to at no distant period, as it is not to be supposed that Government can be at the expense of affording efficient protection to the country without some contribution of the people, levied in all other countries for purpose of Government. The titles to many of the principal estates as they are called, I have reason to believe are of a very questionable nature, and if strictly scrutinised would be found probably very defective : they have on some occasions been acquired, and their limits extended by the exercise of private and undue influence rather than the sanction of public authority. The circumstance of their having been long in possession of the right, such as they are, is the main argument to induce the offer of pecuniary compensation for their redemption. Should the proprietors, as they are called, decline coming to terms, a strict investigation must take place; the terms expressly stipulated on those quoted in Mr. Lewis's last report, that is, the right of resumption must be exerted whenever they can be traced. The offer of paying an annual sum to the proprietor involves no admission of their claims,

for it must be understood that only on their accepting these terms we waive all enquiry. It would appear that many of the original title deeds lodged in the Office of the Court have been made away with, I entertain little doubt, by persons interested, and that the right of resumption and the provision for cultivating and improving them was inserted in all. Should the proprietors assent to the transfer, our course will be very clear; we shall then stand in their place in relation to the actual tenantry. The possession of the lands now occupied and cultivated must, of course, be ensured to them, that is, on the payment of the regular tenth and no more, due notice must be given them that all existing rights will be carefully preserved to them, that regular papers will be given to them specifying and defining the land attached to each, and securing possession to them and their heirs on the established terms. They must be told that they are relieved from all vassalage and feudal services whatever, that their labour is free, that in rendering the tenth of the produce, all pecuniary obligations due to the State are fulfilled, and that for every article required over and above, payment will be made. It must, however, be understood that the settlement to be made with the occupants will embrace only the lands actually cleared, occupied and cultivated; to all lands actually waste and forest the right of Government is reserved; for the gradual clearing of all such lands, arrangement must from time to time be made by the Officers of Government, and in this respect the known and established principle will be observed. That is, to grant cutting papers to such as may apply, to allow to the parties the occupation of the land free of any payment for a given number of years, after which to be liable to the payment of the established tenth or such other terms as Government may settle with the parties. In a country where the soil is particularly rich and fertile, the climate peculiarly favourable and healthy, where due care and attention exist towards the protection of the persons and property of the inhabitants, influx of population and great extension of cultivation may be reasonably expected.

Having made these observations respecting the lands, and proposed a certain course to be eventually pursued, the next point for consideration is the Police of the country. From the report of Mr. Garling above alluded to (of the 11th December), I infer generally that there exists no Police in the interior, that the authority of Government has never been established, that the few inhabitants occupying lands near our frontier are subjected to constant annoyance from the Chiefs and inhabitants beyond them, that the proprietors can neither collect their tenth, or even prevail

on any one to reside there. It appears from Mr. Lewis's report that certain persons under the Chief of Moar have been allowed to establish themselves within the boundaries known from time immemorial as the boundary of Malacca up to Mount Ophir; that this encroachment has been brought about by the aid and connivance of a Dutch proprietor, who was content to act as sub-renter of that Chief, who brought persons into Court to depose to points affecting the limits of the territory; thus, by a strange inconsistency, the sovereign rights of Government, determinable by them only in the Political Department, were brought into discussion in a Municipal Court, which had no jurisdiction whatever in the case. The circumstance of a Dutch subject coming forward to infringe the limits of Dutch territory, affords proof of the singular power assumed by the individual, and the strange laxity and inattention of the Government to their own interest. It would appear indeed, from all I can learn, that the whole time Malacca remained under us, from 1795 to the end of 1818, the public authorities took but little interest in the affairs of the place. Holding it only for a time, the Dutch laws continued in force, and the Dutch Court of Justice was continued in operation, but instead of confining its powers to its proper duties—the administration of Municipal Law—the case before us shows that the Court in reality performed the functions of Government. I mention this subject now, in order to induce caution on the part of the public Officers in parting with the Records of the Dutch Court in Judicial Proceedings, since it seems evident they contain as much matter of Government as of Justice: the whole of the Records should, therefore, be kept as Government Records, the Officer of the Court of Judicature being allowed to inspect, examine and take copies when required. In respect to the measure to be pursued in order to effect the removal of the persons from Moar, and the restoration of the integrity of our territory, I am of opinion a letter should be written to the Chief of Moar to recall them. If not attended to, the gunboat with a party of Sepoys and a careful person may be sent up to a proper position to insist on their removal, but I apprehend little fear of opposition to our wishes. In respect to Police generally, it may be observed that, so long as the present persons called proprietors continue to levy their tenth, they must perform the reciprocal obligation imposed by their tenure of maintaining the peace of the country. In not performing that duty, they have entirely failed in their obligation to the State. Were the Government, therefore, now to maintain Police Establishments, it would only be to incur an expense which the proprietors ought to pay, and they should be distinctly informed that so long as they exercise the pro-

per functions of Government in the collection of the tenth, deriving the profit thereby, they must perform the reciprocal duty. Another duty properly belonging to the proprietors is that of repairing roads, bridges, paths, &c.; this duty appears to have been much neglected; by all account the roads are by no means in the state they used to be, and ought to be in; the little labour that has been bestowed, I suspect to have been the forced labour of the inhabitants, extracted from them by the proprietors, and not paid for. Should the proprietors agree to part with their titles on reasonable terms, the establishment of a regular Police will not be a difficult matter. The enquiries I have made confirm me in the belief that the Panghooloos are the fittest instruments of Police, they appear to be the principal inhabitants of these villages or divisions. Their proper duty has indeed been to levy the tenth on account of the proprietor. When the proprietor puts his right up to outcry and sells to a Chinese contractor this duty seems to be done by the contractor himself, much to the prejudice of the people; the Panghooloo continues, however, to enjoy the immunities of his office—exemption from the payment of the tithe. Two of the Panghooloos I met with at Ayer Panas, distinctly informed me that their fathers were the Panghooloos before them, and that they expected their sons to succeed them. I infer that by the custom of the country the office is hereditary in families, and I think the admission of such practice generally beneficial, as more likely to ensure good conduct and being consonant to the idea of the people. To render the Police efficient throughout the country, it would only be necessary to appoint the Panghooloo the Superintendent of the Police, to use the European term, Constable of his division, to allow him one or more Peons, to explain to him his duties, they are in this case very simple—to seize, and send in all persons breaking the peace or committing crimes and offences, and to execute orders from the superior Magisterial authorities of the country; other duties naturally present themselves—that of keeping a correct list of all the inhabitants of his division, their characters and mode of life, requiring all newcomers and passers by to report themselves, allowing no person to settle without a register, or report to and license from superior authority. In their Revenue capacity, that is, as a servant of the proprietors, eventually of Government, his duty will be to collect the tenth, to report the state of the crops and of the general cultivation. The duties, if I may use the expression, of Revenue and Police are so blended, that they can best be performed by the same person. As to the argument that may be used in respect to abuse of powers, we must recollect that all power in human hands is liable to abuse, that abuse would probably be

greater, certainly not less, by the employment of a separate stipendiary establishment of strangers—Chuliahs or Chinese. Abuse of power can only be prevented by constant local supervision of the Public Servants of Government, and whether the rights of Government are redeemed or left with proprietors, the occasional presence and inspection of Public Officers is indispensable. The expense of erecting a few bungalows in different parts of the country would be very trifling, and I propose that no time be lost in their commencement. They should be built at different directions, at intervals of from six to ten miles,* and the roads between them made and kept in repair. To facilitate the means of communication is the first step to improvement and extension of cultivation. When ready means of access are afforded, when men find that they are alike secure at a distance from the town as they are on the spot, the lands then will be occupied and brought into cultivation, and it is only when that general protection shall have been fully established that we can expect Malacca to assume the appearance of a British Settlement. The communication between the Public Officers and the people should be at all times direct, free and unreserved. The interest of Government can never be separated from the prosperity, protection and happiness of the people. We can, therefore, have no object in deceit or concealment of our intention towards them, and from the knowledge possessed by Mr. Lewis of the language, habits and customs of the Malays in general, I am led to hope his endeavours will be successful in leading the inhabitants of the Malacca Territories fully to understand and duly to appreciate our views in regard to them.

## APPENDIX III.

## COURT OF JUDICATURE OF PRINCE OF WALES' ISLAND, SINGAPORE AND MALACCA.

*Malacca, the 7th day of March,* 1829.

Before Sir John Thomas Claridge, Recorder, and Samuel Garling, Esquire, Resident Councillor.

* At Naning, at or about Tualang Hill; at or about Pangkalan Naning; at Ayer Panas; at half-distance; at the Pepper Plantation; at Supan Hill; at Garling Hill; at Lingy.

ABDULLATIF *v.* MAHOMED MEERA LEBE.

Action to recover possession of a certain piece or parcel of

After hearing the evidence of both parties, plaintiff *Nonsuited with Costs.*

N. B.—In this case, it was proved that in the territories of Malacca the owners of the soil and the cultivators of it are entirely distinct persons, except in, and in the immediate vicinity of, the Town.

That the owner of the soil cannot eject the cultivator as long as he continues to pay him a certain portion of the produce—generally one-tenth.

That the owner of the soil may sell, or otherwise dispose of his interest, without prejudice to the cultivator, and the cultivator *vice versâ.*

That in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law.

That the fact of lands lying uncultivated for periods, is evidence of waste.

| | |
|---|---|
| That the period for paddy is ... | ... 3 years. |
| Cocoa-nut trees and other fruit-trees is | ... 3 years. |
| Gambier, ... ... | ... 1 year. |
| Pepper, ... ... | ... 1 year.* |

## SUPREME COURT,

### MALACCA.

Before Sir P. BENSON MAXWELL, C. J.

March 17, 1870.

SAHRIP *v.* MITCHELL AND ENDAIN.

*Trespass. Meaning of the expression "hold by prescription" used in sec.* 12 *of Indian Act* 16 *of* 1839, *with respect to lands in Malacca.*

* Extracted from the Civil Court Book for Malacca, Vol. 1.

THE CHIEF JUSTICE:—This is an action of trespass. The petition contains two counts—one for expelling the plaintiff from his land and preventing him from reaping the growing crop; the second, for breaking and entering into his dwelling house and expelling him from it, whereby he was prevented from carrying on his business, and was compelled to procure another dwelling. The first three pleas deny the trespass and the possession. The fourth alleges that the plaintiff, *not being a cultivator or resident tenant holding by prescription*, was, by a duly served notice, informed that the land in question had been assessed by Government from the 1st of January, 1870, at 97 cents per annum, and was therein also called upon by the Collector to take out proper title for the land, within a month from the date of the service of the notice, and that in default he would be ejected. The plea then avers that the plaintiff would neither comply with the terms of the notice, nor remove from the land within a month; and that the defendants, by the order of the Collector, and in the exercise of the powers given to him by Act 16 of 1839, assisted him in ejecting the plaintiff, which are the trespasses, &c.

The Act referred to authorises the Collector, by section 3, to eject persons in occupation of land otherwise than under a grant or title from Government, if they refuse to "engage for or to remove from" it within a month from the date on which they are called upon by him to enter into such engagement or to remove. But the last section of the Act excepts from its provisions "such "cultivators and resident tenants of Malacca as hold their lands by "prescription, subject only to a payment of one-tenth part of the "produce thereof, whether such payment be made in kind" or in money.

The trespass was clearly proved; indeed, it was in substance admitted. It was proved or admitted that a notice in the terms stated in the fourth plea, signed by the Lieut.-Governor, had been served on the petitioner a month before, and that by that officer's orders, the defendant MITCHELL, a Clerk in the Land Office, accompanied by another Clerk of the same Office, went in company with the other defendant, ENDAIN, who is a Police Duffadar, three other Policemen, and an European Inspector, to the house of the plaintiff at about 11 A. M. on the 24th December. The Policemen were armed with swords, and one of the Europeans with a double-barrelled gun. The plaintiff was absent; but they turned his wife and family out of the house, and the furniture was removed from it by their orders. The garden and paddy land were also taken possession of; they were afterwards sold by auction by MITCHELL; and the plaintiff

was kept out of possession down to the present time. The plaintiff's wife made some imputations, in the course of her evidence, on the conduct of defendants and their comrades, in aggravation of the trespass, to the effect that her box had been broken open and some money taken from it, and that some of her furniture had been broken; and she also spoke of a threat to burn down the house if she did not leave it; but, as I stated yesterday at the close of the case, I did not think the imputations sufficiently borne out to be entitled to credit. They were denied by MITCHELL; they were not corroborated, as they might have been, if true, by other testimony; and I had no evidence that any complaint had been made at the time, of the loss or destruction of the money or goods. A question arose in the course of the case, whether the Lieut.-Governor was a "Collector" within the meaning of the Act 16 of 1839, and another, whether the notice was in accordance with the 3rd section, as it did not require the plaintiff "to engage for or remove from" the land; but in the view which I take of the main question in the case, viz., whether the plaintiff is one of those "cultivators or tenants holding by prescription," who are excepted from the provisions of the Act by the 12th section, it is not necessary that I should express any opinion on them.

The term "prescription" does not apply in English law, as Mr. DAVIDSON justly observed, to land, but only to incorporeal hereditaments, such as rights of way, common or light; and if the term were construed in its strictly technical sense, it would find no application to cultivators of land. We had no statute of limitations in this country, relating to land, until 1859, and if "prescription" were to be understood as referring to a title to land acquired by long occupation, the section in question would find little or no application here, because the title acquired by the cultivators and tenants in Malacca does not depend on any statute or law of limitations. But there is another sense in which the term may have been used, viz., in the sense of "custom," and in this sense it would make the section so widely and justly applicable to the circumstances of this Settlement that it appears to me beyond doubt that it is in this sense that the Legislature used it.

"Prescription," properly so called, is personal; it is the title acquired by long usage by a particular person and his ancestors, or the preceding owners of the estates in respect of which the right is so acquired. A "custom" is also established by long usage, but unlike prescription it is "local" not personal; when once established, it becomes the law of the place where it prevails, to the exclusion of the ordinary law; and those who have a right under it, have

it, not because they and their ancestors or predecessors have long enjoyed it, as in the case of prescription, but simply because the custom of local law gives it to them, without any referrence to the length of their enjoyment. In the case of prescription, long usage gives title to an individual; in the case of custom, long usage establishes the custom, and it is the custom, become law, which gives title to a class of persons in a locality, and gives it to them at once. The two things are essentially different, but there is a sufficient similarity or analogy between them—usage being an element common to both—to account for their being occasionally confounded; and I think it plain, from the history of the land tenure of Malacca, that it was in the sense of "custom" that the term "prescription" was used in the Act of 1839.

It is well known that by the old Malay law or custom of Malacca, while the Sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all forest and waste land, subject to the payment, to the Sovereign, of one-tenth of the produce of the land so taken. The trees which he planted, the houses which he built, and the remaining nine-tenths of the produce, were his property, which he could sell, or mortgage, or hand down to his children. If he abandoned the paddy land or fruit trees for three years, or his gambier or pepper plantations for a year, his rights ceased, and all reverted to the Sovereign. If, without deserting the land, he left it uncultivated longer than was usual or necessary, he was liable to ejectment. See *Mr. Newbold's Work on the Straits of Malacca*, vol. I, 160. It is clear that rights thus acquired are not prescriptive, in the technical sense of the term, but customary. They are acquired as soon as the land is occupied and reclaimed, and the title requires no lapse of time to perfect it.

It was contended by the Solicitor-General that such a custom was unreasonable and therefore invalid; but if such an objection could now be raised after its long recognition, as I shall presently show, I should not hesitate to hold that the custom was not only reasonable, but very well suited to any country like this, where the population is thin and the uncleared land is superabundant and of no value. It must be for the advantage of the State to attract settlers to lands which are worthless as forest and swamp, and thus to increase at once the population and the wealth of the country. A similar custom or law prevails in Sumatra. (*Marsden's Sumatra*, 224.) In Java, every Javanese has the right to occupy uncleared land, paying for it by giving the State his personal labour on road-making or similar public work, one day in five, or now, under the

Dutch, one day in seven; and though it might seem unreasonable in England that one person should acquire an indefeasible title to occupy the land of another by felling his forest and ploughing the land, I think that, in the circumstances of these countries, it is neither unreasonable nor impolitic for the sovereign power to offer such terms to persons willing to reclaim and cultivate its waste lands. But it is too late to question its reasonableness, after a long and continuous recognition, amounting virtually to an offer of forest land to all who chose to clear it, on the terms of the custom.

The Portuguese, while they held Malacca, and, after them, the Dutch, left the Malay custom or *lex non scripta* in force. That it was in force when this Settlement was ceded to the Crown appears to be beyond dispute; and that the cession left the law unaltered is equally plain on general principles. (Campbell *v.* Hall, Cowp. 204, 209.) It was held in this Court by Sir JOHN CLARIDGE, in 1829, to be then in full force*; and although it was decided by Sir B. MALKIN in 1834,† in conformity with what had been held in India, that the law of England had been introduced into the Settlement by the Charter which created the Supreme Court, it seems to me clear that the law so introduced would no more supersede the custom in question, than it supersedes local customs in England. Further, the custom has always been recognised by the Government; down to the present time tenths are collected, both in kind and in money, from the holders of land acquired under the custom; and from 1838 to 1853, commutations of the tenths into money payments were frequently made by deeds between the East India Company and the tenants, in which it was recited that the Company "possessed the right of taking for the use of the Government "one-tenth of the produce of all lands in the Settlement of Malac-"ca." The Malacca Land Act of 1861 plainly refers to and recognises the same customary tenure, when it "declares" that "all "cultivators and resident tenants of lands" (the sovereign or quasi-manorial rights of which had been granted away by the Dutch Government) "who hold their title *by prescription*, are, and shall "be subject to the payment of one-tenth of the produce thereof to "Government," either in kind or in money fixed in commutation.

That the 12th Section of the Act of 1839‡ would be justly ap-

* See the case of ABDULLAH *v.* MAHOMED MEERA LEBE, *supra*, p. xxxvii.

† See Judgment of Sir B. H. MALKIN; *In the goods of Abdullah deceased.*—MORTON'S *Decisions*, p. 19.

‡ Section 12 of Act XVI of 1839 is as follows:—"And it is hereby provided "that nothing in this Act contained shall apply to such cultivators and resi-"dent tenants of Malacca as hold their lands by prescription, subject only to a "payment to Government of one-tenth part of the produce thereof, whether "such payment be made in kind or in the form of a sum of money received by "the Government in commutation of the payment in kind."

plicable to these customary tenants, can admit of little doubt, when it is considered that that Act made all persons, in general terms, holding lands in these Settlements otherwise than under Government grants, liable to assessment "in such manner, at such rate, "and under such conditions" as the Collector, under instructions from Government, chose to impose; and authorised the Collector to eject all those who declined to "engage for" (that is, I suppose, to accept the terms of the Government), "or remove from the land" in their occupation. These provisions, suitable enough to new Settlements like Singapore and Penang, where neither custom nor even prescription had had time to spring up, could not, without manifest injustice, have been applied to persons in Malacca, who had already a good title to their land by the law or custom of the place; it was to be expected that provision should be made for excepting such a numerous and important class of persons from their operation, and it seems to me that provision was made for that purpose by the 12th section, the Legislature using the word "prescription," not in its technical meaning, in which it would be insensible, having regard to the circumstances of the Settlement, but in the sense of local custom, usage or law, with which it is readily confounded.

If this be so, it is plain that the plaintiff was not liable to ejectment by the Collector for declining "to take out the proper "title" for the land in his occupation, under the Act of 1839. It was forest and uncultivated land when he cleared it in 1829, and he paid tenths to the Government from that time until 1853, when he was appointed Penghulu. This appointment he held until 1868, and during his tenure of it he was, as is usual, exempted from payment. He was deprived of the appointment in 1868, and he paid tenths again in 1869. He is, therefore, plainly one of the customary tenants protected by the 12th section of the Act of 1839.

The only remaining question, then, is as to the damages. The plaintiff claims three hundred dollars. It seems to me that a serious wrong was done him, and that he sustained serious injury when he was expelled from his home and from his land. He had lived there for forty years, and I shall not conceal that I have some sympathy for the feelings of the Malay peasant, driven from his cottage, from the orchard which he planted and the field which he reclaimed—from his home, in a word, and from the fruits of his labour—because he would not give up his good title for one which he was not bound to accept, and nobody had the right to impose on him. But further, the injury was done by or under the orders of an officer, or officers, invested with certain powers, and under the colour of those

powers; and I think that, when public officers set about exercising powers which necessarily inflict suffering or injury, or interfere with the rights or liberties of any person, they ought to be extremely cautious in what they do, or make their agents or subordinates do. Here, the defendants, acting on their own or their superiors' view of the law (it matters not which, as regards the plaintiff), committed a breach of the law, and a breach which might have resulted in a breach of the peace; for among the seven men engaged in the trespass, several were armed, and if the plaintiff had happened to be present, they might have encountered resistance; blood might have been shed, and the officers of the law would have had to answer for all the consequences of having been trespassers and wrong-doers. On the other hand, most of our native peasants, in the plaintiff's place, whether they resisted or yielded, at the time, to the display of force in the name of the law, would not have ventured, as the plaintiff has, to question its legality in a Court of Justice, and they would thus be permanently dispossessed contrary to law. For these reasons, I think it my duty to do what in me lies to discourage such proceedings; and, therefore, having regard to all the circumstances of the case, I shall give the plaintiff the amount of the damages which he has claimed.

Judgment for the plaintiff for 300 dollars.

## APPENDIX IV.

## PROCLAMATION.

A complaint having been laid before the Court of Justice that the Captain Malayu, land-holder for Sungei Pootat and Batoo Brandam, has demanded from his tenants more than $\frac{1}{10}$ on the produce and also on sales or transfers of the property of cultivators,—

Considering that it is against the rules and regulations of the place and opposed to the prosperity of the Settlement, we have found it advisable, in order to obviate this evil, to make known by proclamation that any one found guilty of exacting from any of his tenants a rent exceeding the tenth of the produce, will be

fined 500 Rix dollars for such offence—one-half of which will be given to the Churches and the other half to the Government.

14*th December*, 1773.

JOHN CRANS.
G. KRITMORE.
D. V. SCHELLING.
D. A. DE HINSILE.
A. S. LEMKER,
H. CASSA.

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## PROCLAMATION.

We, JOHN SAMUEL TIMMERMAN THYSSEN, Governor of Malacca and its Dependencies, to all to whom these Presents may come, send greeting:—

Whereas it has come to our knowledge that several covetous persons, proprietors of landed estates, have demanded from their tenants residing on their estates and possessing plantations, which through their industry have been brought to perfection, more than the fixed rate of ten per cent. on the produce of such plantations, and whereas it has also been represented to us that, on the transfer or sale of such plantations, the landed proprietors have demanded ten per cent. upon the amount realized for the same;

All of which, we consider to be an unwarrantable extortion, by which the prosperity of the Settlement and the interests of the industrious inhabitants, must in a great measure be affected;

So it is, that in order to obviate this evil, we direct the following to be promulgated:—

1*st*.—That the proprietors of lands shall be satisfied to levy only a tenth upon the produce of their leased lands.

2*nd*.—That whenever money shall be paid by the tenants of their leased lands or plantations, instead of payment being made in kind, the landed proprietors must, in such cases, annually pass a contract in the presence of two witnesses, viz., the Penghooloo of the district, and the High Priest residing in the neighbourhood, who shall declare that none of the contracting parties have been compelled to enter into such an engagement.

Further, it shall be free to every tenant, after he has planted his ground with fruit trees, or cultivated it, to dispose of the same to another person, without paying to the land-holders the ten per cent.

We renew, against this extortion, the proclamation of the Governor and Director JAN CRANS, bearing date 14th December, 1773, and enforce the penalty of 500 Rix dollars denounced in that publication against the transgressor of this order, the one half of which amount will go to the poor funds and the other to the informer.

It is understood by this, that in the event of a tenant wishing to dispose of his plantation, or transfer it to another, the land-holder shall have the preference on paying down the sum offered by another.

And that no one may plead ignorance, this publication will be published in the Dutch, Portuguese, Malay and Chinese languages.

20*th May*, 1819.

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## APPENDIX V.

# EVIDENCE OF TITLE.
# SPECIMENS OF DUTCH DOCUMENTS.

### I.—"PROPRIETOR'S" GRANT.

GOVERT VAN HOORN, Governor and Director of the Town and Fortress of Malacca, in the place of the late Inche HOLLANDA, Malay Translator and Writer of the East India Company, to whom the land of Battan Tiga, extending in length from Tanjong Broas to Cooleban Pekeneno* and in breadth on the north side extending to Bertam, was given for the good of this place, not only to cultivate it, but especially to settle it in order that no evil-minded or other disreputable people may have harbourage in the said land. Now as the said grantee is some time since dead; so it is that from a good mo-

* Klêbang kechil.

tive being a place well situated, and to prevent the Manicabows our enemies or other evil-minded men from annoying us which would be the case if they were permitted to take shelter in that place: It is therefore by this that we have again appointed as Head and Superintendent of the said place Battan Tiga, Inche Aron, who at present resides in the said place, and we further permit him to cultivate the aforesaid land, on condition that in the event a future Governor, our Successor, shall judge it necessary for the service of the East India Company to make any alteration in the buildings or the plantations on the said land, he must by all means acquiesce in such measures, without expecting to receive any remuneration for the same from the East India Company, on the other side. We promise at the request of Inche Aron to recommend to the favourable consideration of the succeeding Governor, our Successor, if his conduct should deserve the favour, to place his son Samsoodeen in the next possession of the said piece of land in the event of his death or resignation of the charge, this we do in consideration of the loss of 900 Rix dollars sustained by Inche Aron, arising from the mortgage of the said land to him by his predecessor Inche Hollanda. The above land is, however, subject to all Government impositions and taxes which are at present in force or may hereafter be introduced.

(Signed) G. van HOORN.

*Malacca*, 17*th June*, 1700.

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## II.—GRANTS OF TOWN LOTS.

Jan Crans, Governor and Director of this place and of the Fortress of Malacca and its whole jurisdiction, makes known.

That I have allowed and granted with the consent of the board of Administration of this place, as I allow, grant and make over by these presents, to the master of the Smith's shop, Mr. Omstee a piece of unoccupied and uncultivated ground, belonging to the East India Company, bordering upon the trench, to the East of this Fortress, between the points Amelia and Henrietta Louisa, broad in front along the road, six rods and three feet, course N. N. E. and S. S. W., and behind, towards the east side, bordering on

the land of the Malabar Moetia, six rods and six feet, course N. and S., besides deep on the North East side, bordering on the property of the said Omstee, ten rods and eight feet, course E. S. E. and W. N. W., and on the south side bordering on the land of the widow of the book-keeper, Martinus van Toulon, thirteen rods and three feet, the same course as on the South West side, all in Rhineland measure, conformable to the surveyor's new plan of 10th August of this year, and that he may take legal possession of the said unoccupied ground and let it out, or mortgage it, or do with it whatever he likes, provided, however, that he will always remain subjected to all the taxes and duties already put on land and properties by the high authorities, or which might still be ordered in the future.

Thus done and given in the Fortress of Malacca the.....August, 1776.

(Signed) Jan CRANS.

Seal of the East India Company in red sealing-wax.

By Order of His Honourable the Governor and Director of this place and of the Fortress of Malacca and of the board of Administration.

(Signed) J. F. FABRIENIS,
*Secretary.*

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Pieter Gerardus de Bruyn, Governor and Director of this place and of the Fortress of Malacca and its whole jurisdiction, makes known that, with the consent of the Board of Administration and with the object of improving this place and with other good purposes, I have transferred to and bestowed upon the Surgeon-Major of this Fortress, Mr. Johan Hendrik Werth, a certain piece of ground, situated within this Fortress, opposite the "Middelpunt" (centrum), between two other cultivated properties of the same owner, broad in front along the Public Road, five roods four feet and ten inches, course N. N. E. or S. S. W., and behind St. Paul's Hill, the same breadth and course as on the South East side, besides deep on the North side and on the South side, twenty roods, course W. N. W. or E. S. E., all in Rhineland measure, according to the plan of the sworn Surveyor, Hermaus Jelgerhuis dated 30th March last, to take henceforward legal possession of

this piece of land for him and for his heirs, with the right to sell it, or to alienate it in another manner, or to let it out, or to do with it whatever he likes, provided however, that it will be kept clean, and that it will be cultivated; whilst any Possessor, whosoever he may be, shall be subjected to all such taxes, duties and rules, already laid down by the High Authorities of this Government, or by their representatives, on land granted in this way; or to any Rules or Ordinances, still to be made and besides, that any Possessor shall be bound to make restitution of the said ground, if it might be required for the use of the East India Company, without having the right to make an action for damages.

Thus drawn and given in the Fortress of Malacca, this 12th May, 1785.

(Signed) P. G. DE BRUYN.

Seal in red sealing-wax of the Judicial Council.

By order of the Governor and Council.

(Signed) C. G. BAUMGARTEN,
*Secretary.*

---

WILLIAM FARQUHAR, Commandant of this Town and its Fortress, makes known.

That with the object of improving this place and with other good purposes I have transferred to and bestowed upon Mr. ADRIAAN KOEK, Captain of the Civil Guard, as I am doing again by these presents, a certain piece of ground situated on the West side of this town outside Tranquerah's gate on the sea-shore, broad in front along the public road, eight rods and nine feet, course E. $\frac{3}{4}$° S. or W. $\frac{3}{4}$° N. and behind on the sea side, eight rods and nine feet, course as in front besides deep on the S. E. side, thirty-one rods, course N. $\frac{3}{4}$° E. or S. $\frac{3}{4}$° W. bounded by a small piece of Government land and a small road towards the sea, and on the S. W. side by the garden of the said Mr. KOEK, also deep thirty-one rods, course N. $\frac{3}{4}$° E. or S. $\frac{3}{4}$° W., all in Rhineland measure, conformable to the plan of the Sworn Surveyor of the 19th instant, to take henceforward legal possession of this piece of land for him and for his heirs, with the right to sell it or to alienate it in another manner, or to let it out, or to do with it whatever he likes,—provided, however, that it will be kept clean and that it will be cultivated, whilst any possessor,

whosoever he may be, shall be subjected to all such taxes, duties and rules already laid down by the high authorities of this Government or by their representatives, as to land granted in this same way, or to any new Rules or Ordinances, still to be made, and besides that any possessor will be bound to make restitution of the said ground, if it may be required for the use of the East India Company, without having the right to make any action for damages.

Thus drawn and given in the Fortress of Malacca this 21st November, 1808.

(Signed) W. FARQUHAR,
*Captain Commandant.*

Seal of the East India Company in red sealing-wax.

By Order of the said Commandant
WILLIAM FARQUHAR,

(Signed) J. W. STECKER,
*Secretary.*

---

This the 2nd February, 1816, a piece of the herein mentioned ground has been sold and transferred to the Hon'ble WILLIAM FARQUHAR, Resident and Commissioner oft his place, broad in front along the public road, eight rods and six feet, course E. $\frac{3}{4}°$ S. or W. $\frac{3}{4}°$ N. and behind on the sea-shore, seven rods and eight feet, the same course as in front, besides deep on the East side Mr. A. KOEK's, thirty rods, course S. 6° W. or N. 6° E., and on the West side bounded by the land of the Hon'ble WILLIAM FARQUHAR, thirty-one rods, course N. $\frac{1}{2}°$ E. or S. $\frac{1}{2}°$ W. all in Rhineland measure, conformable to the new plan of the Sworn Surveyor of this place, JOHAN HENDRIK VALBERG, dated the 26th October of last year.

In cognizance of me the undersigned,

(Signed) A. Y. STECKER,
*Secretary.*

## III.—CERTIFICATES OF TRANSFER OR TRANSMISSION.

This day the 14th July, 1772.

Appeared before us the undersigned, especially appointed Members of the Hon'ble Court of Justice of this Government, the Portuguese DOMINGOS DE COSTA, inhabitant of this place, who has pretended, and proved to us, to be the proprietor of three plantations situated at a small distance up the river and called *Corbou, Tuallang* and *Madjap;* that the said plantations have still the same extent as when they were owned and holden by his deceased father JOAN DE COSTA, pursuant to a deed of purchase, dated 20th May, 1734, and to a title deed, dated 6th April, 1739, and that the said plantations have been assigned and allotted to appearer as co-heir of his deceased father JOAN DE COSTA, and as heir of the late INNOCENTIA DE COSTA his sister, according to a deed of liquidation of the succession, passed before the Sworn Chief Clerk of the Police Court and two witnesses on 8th July inst.

The possession of the said plantations being legal and legitimate, the appearer is consequently entitled to sell and alienate the three plantations aforesaid as he thinks best.

And in order to be able to prove his lawful right, where and whenever he may want to do so and to exempt himself and guarantee that all is as it ought to be according to the Law, this deed has been granted to him.

In witness whereof We the especially appointed Committee have hereunto set our hands and have confirmed it with the seal of this town.

Thus done and passed in the Fortress of Malacca at the date above written.

(Signed) DOMINGOS DE COSTA.

The Members of the Committee.

(Signed) DANIEL DE NEUFOILLE.
„ T. U. VAN MOSBERGEN.

In witness whereof.

(Signed)————(name unreadable.)
*Secretary.*

No. 574.

This day the 3rd April, 1815.

Appeared before us the undersigned, especially appointed Members of the Court of Justice of this Government, the Arab Cheg Amat bin Mohamat Baraloean and his son Mohamat bin Achmat Baraloean (now abroad), who, in the quality of general proxies of the Moorish woman Bibi Adji Boon Nessa Ganam Bintee Mirsa Mohamat Leabeek, inhabitant of *Suratta* (the only remaining heir of her deceased mother Bibi Amator Rahin), and in virtue of a Dutch power of attorney, dated the 3rd May, 1808, translated in the Arabic language on the 10th of June, 1813, declared to have sold and transferred to and in behalf of Joseph Minas, an Armenian Merchant at this place, two pieces of ground, now united to one, which have belonged to her above mentioned mother, (pursuant to a Deed of Purchase, dated 3rd September, 1777), situated in the Northern suburb in the *Heeren* or *Tranquera Street*, at the end of that Street next to the gate of Tranquera, with a brick house on its South Western side, is broad in front along the Street five rods and six feet, course N. W. 4° W. and behind at the seaside five rods and eight feet, course S. E. 4° E., besides deep on the N. W. side, bordering on the land of Jan Teijs, twelve rods, course N. E. 4° N. and on the S. E. side, bordering on land of the same owner as this ground, also twelve rods, course S. W. 4° S., with a private stone-wall on both sides, all in Rhineland measure, conformable to the new plan of the sworn Surveyor Jan Hendrik Valberg, recently drawn again on the 24th of last July, and such for the amount of Spanish Dollars one thousand and six hundred, of 68 stivers each, which amount the transferor acknowledges to have received already, promising to exempt and to guarantee this Transfer, for all whomsoever, to be as it ought to be according to the Law.

In witness whereof We the especially appointed Committee have hereunto set our hands and have confirmed it with the seal of this town.

Thus done and passed in the Fortress of Malacca, at the date above written.

By the Order of the following Gentlemen, Members of the Committee,

(Signed) W. OVERREE.
„ W. BAUMGARTEN.

(Signed) A. Y. STECKER,
*Secretary.*

---

N. B.—The foregoing translations give, it is believed, the purport of the originals, but I am not responsible for grammatical errors in the English version.

W. E. M.

this piece of land for him and for his heirs, with the right to sell it, or to alienate it in another manner, or to let it out, or to do with it whatever he likes, provided however, that it will be kept clean, and that it will be cultivated; whilst any Possessor, whosoever he may be, shall be subjected to all such taxes, duties and rules, already laid down by the High Authorities of this Government, or by their representatives, on land granted in this way; or to any Rules or Ordinances, still to be made and besides, that any Possessor shall be bound to make restitution of the said ground, if it might be required for the use of the East India Company, without having the right to make an action for damages.

Thus drawn and given in the Fortress of Malacca, this 12th May, 1785.

(Signed) P. G. DE BRUYN.

Seal in red sealing-wax of the Judicial Council.

By order of the Governor and Council.

(Signed) C. G. BAUMGARTEN,
*Secretary.*

---

WILLIAM FARQUHAR, Commandant of this Town and its Fortress, makes known.

That with the object of improving this place and with other good purposes I have transferred to and bestowed upon Mr. ADRIAAN KOEK, Captain of the Civil Guard, as I am doing again by these presents, a certain piece of ground situated on the West side of this town outside Tranquerah's gate on the sea-shore, broad in front along the public road, eight rods and nine feet, course E. $\frac{3}{4}$° S. or W. $\frac{3}{4}$° N. and behind on the sea side, eight rods and nine feet, course as in front besides deep on the S. E. side, thirty-one rods, course N. $\frac{3}{4}$° E. or S. $\frac{3}{4}$° W. bounded by a small piece of Government land and a small road towards the sea, and on the S. W. side by the garden of the said Mr. KOEK, also deep thirty-one rods, course N. $\frac{3}{4}$° E. or S. $\frac{3}{4}$° W., all in Rhineland measure, conformable to the plan of the Sworn Surveyor of the 19th instant, to take henceforward legal possession of this piece of land for him and for his heirs, with the right to sell it or to alienate it in another manner, or to let it out, or to do with it whatever he likes,—provided, however, that it will be kept clean and that it will be cultivated, whilst any possessor,

whosoever he may be, shall be subjected to all such taxes, duties and rules already laid down by the high authorities of this Government or by their representatives, as to land granted in this same way, or to any new Rules or Ordinances, still to be made, and besides that any possessor will be bound to make restitution of the said ground, if it may be required for the use of the East India Company, without having the right to make any action for damages.

Thus drawn and given in the Fortress of Malacca this 21st November, 1808.

(Signed) W. FARQUHAR,
*Captain Commandant.*

Seal of the East India Company in red sealing-wax.

By Order of the said Commandant
WILLIAM FARQUHAR,

(Signed) J. W. STECKER,
*Secretary.*

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This the 2nd February, 1816, a piece of the herein mentioned ground has been sold and transferred to the Hon'ble WILLIAM FARQUHAR, Resident and Commissioner oft his place, broad in front along the public road, eight rods and six feet, course E. $\frac{3}{4}$° S. or W. $\frac{3}{4}$° N. and behind on the sea-shore, seven rods and eight feet, the same course as in front, besides deep on the East side Mr. A. KOEK's, thirty rods, course S. 6° W. or N. 6° E., and on the West side bounded by the land of the Hon'ble WILLIAM FARQUHAR, thirty-one rods, course N. $\frac{1}{2}$° E. or S. $\frac{1}{2}$° W. all in Rhineland measure, conformable to the new plan of the Sworn Surveyor of this place, JOHAN HENDRIK VALBERG, dated the 26th October of last year.

In cognizance of me the undersigned,

(Signed) A. Y. STECKER,
*Secretary.*

## III.—CERTIFICATES OF TRANSFER OR TRANSMISSION.

This day the 14th July, 1772.

Appeared before us the undersigned, especially appointed Members of the Hon'ble Court of Justice of this Government, the Portuguese DOMINGOS DE COSTA, inhabitant of this place, who has pretended, and proved to us, to be the proprietor of three plantations situated at a small distance up the river and called *Corbou*, *Tuallang* and *Madjap*; that the said plantations have still the same extent as when they were owned and holden by his deceased father JOAN DE COSTA, pursuant to a deed of purchase, dated 20th May, 1734, and to a title deed, dated 6th April, 1739, and that the said plantations have been assigned and allotted to appearer as co-heir of his deceased father JOAN DE COSTA, and as heir of the late INNOCENTIA DE COSTA his sister, according to a deed of liquidation of the succession, passed before the Sworn Chief Clerk of the Police Court and two witnesses on 8th July inst.

The possession of the said plantations being legal and legitimate, the appearer is consequently entitled to sell and alienate the three plantations aforesaid as he thinks best.

And in order to be able to prove his lawful right, where and whenever he may want to do so and to exempt himself and guarantee that all is as it ought to be according to the Law, this deed has been granted to him.

In witness whereof We the especially appointed Committee have hereuuto set our hands and have confirmed it with the seal of this town.

Thus done and passed in the Fortress of Malacca at the date above written.

(Signed) DOMINGOS DE COSTA.

The Members of the Committee.

(Signed) DANIEL DE NEUFOILLE.
„ T. U. VAN MOSBERGEN.

In witness whereof.

(Signed)————(name unreadable.)
*Secretary.*

No. 574.

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In witness whereof We the especially appointed Committee have hereunto set our hands and have confirmed it with the seal of this town.

Thus done and passed in the Fortress of Malacca, at the date above written.

By the Order of the following Gentlemen, Members of the Committee,

(Signed) W. OVERREE.
„ W. BAUMGARTEN.

(Signed) A. Y. STECKER,
*Secretary.*

---

N. B.—The foregoing translations give, it is believed, the purport of the originals, but I am not responsible for grammatical errors in the English version.

W. E. M.

*Errata.*

Page 79, Note * *add,* But see the judgment in *Abdullatif* v. *Mahomed Meera Lebe,* Appendix p. xxxvii.

82, line 12, *for* he regards *read* he does not regard.

84, last line but one, *for* pleuveuse *read* pluvieuse.

85, Note * *for* du *read* de.

98, line 7, *for* giving *read* going.

„ line 8, *for* by the sea *read* by sea.

99, Note † *for* Id., p. 261 *read* Newbold, I, p. 261.

104, line 5, *after* eviction, *add* (see p. 91 end of note*).

107, Note * *add,* Appendix, p. xxxi.

110, line 19, *add* (see Appendix p. xvii).

113, Note * last line but two, *for* alludes almost *read* alludes—almost.

116, line 21, *for* one-tenth *read* one-seventh.

117, line 17, for Chapter VIII *read* Chapter VII.

126, Note ‡ *add* Appendix, p. v.

148, line 12, *add* (see Appendix V, p. xlviii.)

149, line 16, *for* preventeh *read* prevented.

„ line 17, *for* witd *read* with.

xii, line 11, *for* jaga *read* juga.

xlvii, last line but one, *for* Hermaus *read* Hermanus.

l, line 25, *for* hereuuto *read* hereunto.

# ON THE STREAM TIN DEPOSITS OF PERAK.

Lectures delivered at Thaipeng, Pêrak,

by

The Revd. J. E. TENISON-WOODS, F.G.S., F.L.S., &c.

## LECTURE I.

## 17th April, 1884.

I have here before me two pieces of stone. One, you observe, is a rough fragment of granite of irregular shape: the other is a rounded pebble such as you may pick up any day from the gravel of a running stream. If I ask how these stones came to have their respective appearance, few would hesitate for an answer. You would say that one has been roughly broken off from a rocky mass: and the other has been rounded in the bottom of a running stream. Yet, in these opinions, simple as they are and evidently borne out by the facts of the case, you have formed by the interpretation of the geological record. You have acted upon a principle which, if followed up, must lead to the interpretation of many of the geological features upon the earth's surface. You have deciphered one of the inscriptions which nature has written on the stones, that is to say, the record of the way in which its forces have been exercised.

In this respect, there is a close resemblance between the work of an Archæologist or Antiquary and that of a Geologist. For example, the antiquary finds a stone, covered all over with inscriptions. This, he says, must have been done by a human hand. The man who has cut this has known the use of metals as well as writing. His people had arts, and thus he draws conclusions which no one will be found to dispute, which no one can dispute, as they obviously belong to the facts of the case, however much we may question theories built upon these facts.

Precisely in a similar manner we are able to draw conclusions from the inscriptions on the stones before us. The first is rough

and its fractured edges show that it has been detached from a more massive rock by the exercise of some force. But I shall reserve for another occasion what I have to say about this piece of stone.

The second stone is water-worn. Whatever shape it had formerly, that shape has been modified by the action of a running stream. No other natural action gives to stones the peculiar smooth and rounded shape that this stone has. It has not, however, been produced by water alone. There has been also the grinding action of friction by one stone upon another. Running streams have their gravel in constant motion. By carrying away sand and lighter particles, the large stones are constantly shifting their position and rolling over. Then a flood comes, and the stones are pushed along and pounded against one another until the edges of the fragments have abraded and rounded. This process of hammering, breaking and washing is one that is constantly going on. It is more rapid of course and constant in swift deep streams. Irregular as it would seem, modern science has found means to measure it. By the use of the water telescope and by actual experiment, Mons. Daubrèe has learned much that formerly was, in this matter, mere conjecture. By means of revolving cylinders, he found that when pieces of granite are subjected to the kind of movement and friction met with in rivers, they are reduced to fine mud when they have traversed a distance of about 25 miles.

One word here about this granitic mud, which will form subsequently a subject of our enquiry. Though the change from a rough piece of granite to mere fine mud is very great, yet it is not so complete as to elude detection by the microscope. With the aid of this instrument, an expert can tell you at once that such mud has been derived from granite. He can not only tell you what kind of granite it was, but also whether it contained any metals. He can also say with certainty whether it was the action of the sea or rivers which reduced it to mud, and many other particulars which we shall find hereafter most useful in our present enquiries.

It may seem very unnecessary to spend so much time in explaining so simple a thing as the manner in which stones become water-worn. But obvious as it is, I think you will acknowledge its importance if you will bear with me a little longer. Simple also as it is, several important geological conclusions depend upon it: and in fact, like most simple things in nature, when closely observed, it serves to explain what is very complex. Thus, if you pay attention to the hills and mountains which surround the beautiful valleys near Thaipeng, you will notice features which this water-worn piece of stone will help you to explain. Our mountain

range has been rounded and moulded in a manner similar to all mountain ranges of its class on the earth's surface. The crest of the range rises and falls according to the projections of the rocks which are mostly bare on the summit. Weathering soon decomposes and rounds them, and the materials are swept to lower levels. From the crest buttresses descend; the drainage from which soon carves out deep valleys on the sides. On these latteral buttresses other valleys are cut down, and so on almost infinitely. The whole thing, however complex, represents one huge system of drainage. The great surface presented by the side of the range acts as an extensive condenser to the moist air from the sea The water is ever rushing down back to the ocean, first in rivulets, then in torrents, and often, as an obstinate face of rock stops the water dashing over, in angry cascades. It is never at rest. Each day the process of wearing away goes on in thousands of rills and streams. But observe that it is not water alone which is doing the work. The sand and fragments of rock carried down by the water does the great work of scouring and cutting down the valleys, and the mountains are thus very slowly but surely worn away.

At one time in their history, probably these mountains were upheaved, but upheaval has little to do with their present form. The features which so many mountains share in common, point to some common cause for all, and this is what we call weathering, erosion or denudation. It is the effect of the friction of water and sand just as we see in the case of the water-worn pebble. So when you hold that pebble in your hand, you hold in miniature what the water is doing in the hills around you. Water is the universal solvent, and the law of gravity does the rest. Rocks are undermined and come tumbling down in landslips which fill up the valleys. Water pounces upon them here again and gives the stones no rest. They are worn away and carried to the sea, and the valley is scooped out again waiting for other supplies of material. Thus, gradually, main ridges become scarped and cut down by side valleys until they dwindle away. The materials are carried into plains which gradually build up islands and mud flats such as those which front the western side of the Malay Peninsula.

Those who have visited the top of the range must have remarked how the crystals of felspar stand out from the surface of the granite just like pebbles in conglomerate. They often project an inch or more. Weathering has dissolved away the rock around them. Their crystalline structure and compact form enable them to resist decomposition, and thus they remain, for a time, as a

record of what water has done.

If, then, the Thaipeng Range has thus assumed its present form by the action of water, we may assume that we have no means of knowing the extent to which it has been worn away. It certainly was higher than it is, and I shall show you what reason there is for believing that it was covered by other formations. But one thing we can certainly say. It has not been recently raised from the sea. Recent marine remains are entirely absent from it. I need not tell you perhaps that the sea never leaves doubtful signs of its presence where it has once been. Its infinite treasures of life leave millions of relics behind to mark the history of its stay. Nothing of the kind is seen here. Instead, we have layers of vegetable remains to mark what has been the former land surface and how it has supported only plant life.

To find out the geological history of these hills we must interrogate the only record that remains to us, that is, the material derived from the rocks, the drifts, sands and mud banks. This at first would not seem to be a very hopeful enquiry. But more evidence will be forthcoming from it than one would think. Daubrèe's experiments have shown that rocks are broken smaller and smaller by water until there comes a time when friction and abrasion have no longer any power. This is when they are reduced to fragments about one-fiftieth of an inch in diameter. Not only do they then cease to become broken, but the fragments do not readily become rounded or abraded at the edges. Such fragments are easily examined by microscopes of moderate power. By its aid the sand tells us its history. If it be from the sea, particles of lime and shell with other familiar remains soon tell its origin. If it were aerial or from a desert, every particle will be rounded, abraded and opaque. If from fresh water there will be carbonaceous matter and a peculiar sorting of the materials which I shall explain more fully.

With these facts as a guide, let us now examine the material which has come down to the plains from the mountains. Close to the hills we shall find boulders and heavy gravel. Their weight obviously prevents these materials from travelling far. Amongst the boulders some are angular, or just as they have rolled down from the hills, and some are rounded by water. Further out in the plain, we find alluvium and certain outliers of rocks which have as yet escaped denudation. These sometimes rise into detached hillocks, such as the Resident's Hill. Or they may scarcely rise above the surface at all, such as the red clays near the Thaipeng gaol. These clays are most important, and we shall consider them more

attentively by and by. The rest of the plains are river drifts.

When persons see only narrow streams crossing wide plains, they with difficulty understand how such rivulets could have formed such large areas of gravel, sand and earth. But the cause is quite adequate for the effects, if we remember the constant drainage from the sides of the mountains. It is unceasingly bringing down new material, which, as it accumulates, throws the stream backwards and forwards. No matter how distant certain portions of the plain may be, as soon as they become the lowest level, the water goes over to it and heaps it up.

It was the custom, long ago, to explain deposits of alluvium and gravel by theories of great inundations. But great inundations and convulsions of nature have a tendency to destroy and remove. The building up is done by the little stream which, like the busy bee, neatly spreads the materials. They may be called nature's chisels which carve and chip the stone, and nature's trowels which smooth and level everything.

Bear in mind again that the whole of the plains are not formed of alluvium. There were inequalities on the surface which are covered over by drift, but of unequal thickness. These, no doubt, were barriers to the waters until the drift rose up to them.

But not only does drainage level the materials. It sorts them as it carries them along. Lighter portions of granite sand, especially mica, are carried a long distance. Some metals also with light scaly ores, such as specular iron or titaniferous iron, are borne a long way. Heavy metals such as tin, gold and platinum, soon sink and remain behind.

In another lecture, I shall tell you more about granite, or the rough piece of stone with which we began this evening. But I want to say now that granite frequently contains metalliferous veins and crystals of oxide of tin scattered through it. This latter is a heavy mineral, and is never carried far from the hills. It is enclosed in granite, or at least mixed up with other rock, yet it is gradually sorted out and gathered together. The constant operations of water washes it and buries it in alluvial drift where it becomes stream tin. Vein tin, from its name, means tin ore occurring in lodes or veins, whence it has to be quarried from the solid rock. Vein tin, though in narrow lodes, goes down to great depths: stream tin is only a shallow deposit of fine ore spread over a wide surface. It is better ore and more accessible, but less permanent than vein tin.

But has all the alluvial drift of the Lârut plains been derived from granite? I think not. I referred just now to the red clays,

These are stratified. If you examine those which are not far from the gaol, you will perceive in them a singular ribbon-like structure. There are lines varying between red. yellow, white and dark slaty blue. In some places, traces of quartz veins may be seen. The strata are twisted and crumpled into curves and folds. Now, I regard this as a very ancient formation, and which once probably covered the granite. The latter rock has been pushed through it, and this is why we find it principally at the base and the sides of the range. Probably the granite itself has been formed from this rock. It has been melted into its present crystalline form. But the clays contain more iron than the granite does. They have been much changed by their contact with the granite, and some portions of the formation have been converted into what geologists call "gneiss." I fear I cannot explain these terms to you now in the time at my disposal.

There is one thing about these clays which must strike observers, and that is their fiery red colour. This is due to per-oxide of iron or rust of iron. In these countries such a rock is called "laterite." Though the term is applied to many different kinds of rock, in fact any red stone or clay, I am now referring to only one kind, which is that derived from the paleozoic or ancient formation which lies above the granite. I wish to add also that, when not affected by much oxidation or rusting, these clays are blue instead of red.

These paleozoic clays give us a clue to the age of the tin. It tells us that the metal occurs here as it does in other parts of the world, that is, in connexion with the oldest granites. These paleozoic clays are probably Ordovecian, or amongst the oldest of the stratified series known to geologists. Usually such clays or slates have been much altered by the changes to which they have been subjected in their long history.

From the great extent in which these clays appear throughout the Malayan Peninsula we may conclude they they once covered the whole of it before the granite burst through. But before this took place, the strata were much twisted and altered owing to heat, pressure and movements of the earth's crust.

There are excellent sections of this formation in the cliffs around New Harbour, Singapore, and again where the new road cuts through the hills on which Fort Palmer is built. The east side of Fort Canning also at Singapore shows an outcrop of the same rock with regular strata dipping to the westward and a surprising variety of colouring. At Tanjong Kling near Malacca the fiery red rocks, more properly termed Limonite instead of Laterite

have been derived from similar rocks. I call them Ordovecian, a term proposed for the Upper Cambian series, but I merely suggest this age as probable. They much resemble the Ordovecian of Australia, though the precise age cannot as yet be proved.

It is probably under these clays, at their junction with the granite, the great deposits of tin ore took place. All mining geologists are aware, that when any metal is contained in a rock, it will be most abundant at the junction of that rock with another formation. I do not undertake to explain why it is so, but I merely state the fact. The junction of two formations is the locality where metallic deposits must be looked for. The whole of the granite in the peninsula contains tin, but it is at the junction of this granite with the paleozoic clays that the richest deposits of tin ore have taken place.

Thus the red clays become a good indication where tin sand may be looked for. But observe: it is not at this junction that mining takes place. It is when the clay has been washed away and the tin washed out of the junction; when it has been sifted and sorted by streams of water that the stream tin has been deposited where miners get it now. Not at the base of the clays, but in the drift which has been derived from the clays and the granite together.

It may, be asked, therefore, whether it would be worth while to mine through the clays where they have not been denuded and look for tin at their junction with the granite. I think it would be worth trying. I do not think the tin sand would be likely to prove so rich as in drift where it has been subjected to ages of washing and puddling from the streams. Tin sand is found upon the clays throughout Thaipeng and the neighbouring hills. I cannot even give a guess at how thick these clays are, except that I do not think they can be very thick. I repeat that it would be worth while trying whether there is what miners term a second bottom.

Observe also that I do not think that the tin deposits are merely confined to the junction of the granite with the paleozoic clays. The ore may be found at the junction of the granite with any rock. On the other side of the range, we seldom see these clays, but in place of them we have limestone and marble abutting on the granite. Here also tin is found and in great richness.

So, those who go prospecting may take the presence of such formations as a favourable indication, especially where there are high ranges near so as to secure the destruction and thorough washing of the overlying rock.

If any one asks why we do not find tin in such places as Singa-

pore, where the paleozoic clays and granite are found side by side, the answer is that there are no drifts. The reason of that is that there are no high mountains near to give rise to them. Small quantities of tin have been found at the junction of the clays and granite at Singapore, sufficient perhaps to justify the conclusion that had they been subjected to the action of running water and mountain streams for ages, large deposits of stream tin would have resulted.

At the same time, I do not suppose that all the granite at its junction with some overlying formation is equally rich. Generally it is rich. There are doubtless barren granites here as elsewhere, but they seem to be fewer here than elsewhere.

It is a remarkable fact in mining for tin that stream tin ore and mineral veins or lodes of tin are seldom found together. I say seldom, because I am not so sure about the experience of Europe, but I might say never, as far as experience teaches us in Australia and in this country. The richest tin lodes in Australia (Herberton) have no stream deposits anywhere near them. I should say that the causes which made the tin segregate into lodes were more energetic than those which condensed it loosely on the edges of an overlying formation. This, however, is theory. What my experience teaches me as certain is,—first, that stream tin is not derived from lodes or veins; and secondly, that lodes or veins do not decompose into anything like stream tin.

Now let us, in conclusion, examine the sections presented by the tin mines at Thaipeng, and see how far these will bear out those inferences. First of all, we meet with loamy clay or black vegetable mould, full of roots, branches, stumps of large trees in the positions in which they grew, besides prostrate stems of trees. Half of this black deposit is water, and half the remainder is vegetable matter that will burn. Underneath are layers of white, red and yellow sands, mixed with coarse layers of quartz and felspar. There are also occasional deposits of red clay.

By the aid of the microscope we find that the sand is derived from granite and deposited in fresh water. If you examine it closely, you will see that the grains are all angular and transparent. When the polariscope is applied to them, we find a magnificent play of colours. By the same instrument we are enabled to distinguish a few fragments of felspar and fewer still of mica. A little experience enables one to pronounce at once that this sand has come from granite. If it had been derived from a volcanic rock, the quartz would be glassy and not give the play of colours that we observe here.

The red clays, and probably the yellow clays, are derived from the paleozoic strata. The white clays may be decomposed felspar from which the sand is washed out. All this careful sorting and sifting has been effected by the force of gravity aided by the never failing streams of water from the hills.

Occasionally, vegetable soil is again repeated, showing that there were different surfaces of dry land at different levels and at various times in the geological history of these deposits.

Then appear more or less worn fragments of quartz, felspar, fluourspar, and granite. This may be called a gravel, but its material is sometimes a stratum of mere pebbles, or sometimes consisting of large boulders. These represent various vicissitudes in the history of the stream. When such water-worn stones are cemented together, the rock is called a conglomerate.

Underneath all these deposits, at a depth of 20 or 30 feet, we find the stream tin. It is usually in a gravel with much fine clay and coarse sand, which gives the stratum a grey speckled appearance. The depth of the tin stratum is variable, but seldom more than four feet. and often, in even rich mines, much less. The tin rests upon white or blue clay either paleozoic or derived from the granite.

Now, when we find the tin sand all in one place and in the lowest stratum, we must conclude that it came there by the force of gravity, or that the upper part of the rocks from which the tin was derived was richer in tin than that which subsequently supplied the materials for the drift. Both these conclusions, I think, are partly true.

The drift overlying the tin may, in some case, have been removed and replaced many times by the running waters as they shifted their beds. Streams undermine their banks, they fall in, and are thus turned over, washed and re-washed and the heavier particles of tin soon become a stationary stratum in the lowest part. This is the history of a good deal of the tin deposits, but not of all. According to what has been already said, some portions of the materials for the drift were richer in tin than others, that is, the junction of the paleozoic clays with the granite rock. When these rocks were subjected to erosion, tin sand accumulated in much larger quantities.

If this explanation be correct, then we ought to find tin sand at different levels in different mines, and, as a matter of fact, we do. But in one group of mines there is generally a correspondence in the level of the tin in all parts of the field. Thus in Thaipeng it occupies nearly the lowest levels, from which we may infer that a

good deal of barren rock has been denuded since the rich beds at the junction of the granite and clay have been washed away.

To some extent, tin sand may have gravitated through the loose watery sands even after they were deposited in beds. This actually occurs in thin strata of washed sand which is thrown out of the sluices. What little tin ore remains in this sand is found to have settled down to the bottom. But, of course, this could not happen through coarse gravel or compact clay.

At the risk of being tedious, I must repeat the important lesson to be learned from these facts. The way in which tin sand is found in rich deposits in certain parts only of the drift, shows that it has been the wearing away of some restricted portion of the rocks. This is at the junction of a formation overlying the granite. Wherever, therefore, either from the out-crop of the rocks or the nature of the drift such a junction appears evident, deposits of tin may be looked for. Red clays are to be regarded as a specially favourable indication, and so are out-crops of slate, schist or limestone near granite. But an essential condition appears to be that there should be high granite hills near, in order to secure the requisite drainage for the formation of drift.

I have mentioned how hollows in the ground affect the deposition of tin. There are a good many depressions of the kind about these mines, though the surface is even. The ground, as the miners say, rises up, and the ore is almost absent from the slopes, while it is unusually rich in the hollows, those nearest the hills being the richest.

It may be asked whether tin sand might be looked for at any great distance from the hills. To this a double answer may be given. The first is that tin sand usually does not travel far, even when it is very fine. A mile from its origin would be a long distance.

But, secondly, tin may be looked for far out in the plains, because it is certain that both paleozoic clays or granite in the form of outlying hillocks have existed there, though now they are washed away. In this case, the nature of the soil would be the best indication.

The manner in which the paleozoic clays are stratified, and how the strata are turned and twisted and crossed by white veins, has suggested to the author of "Tin Mines in Lârut" that there were fearful convulsions of nature going on when the stream tin was deposited. But the cause of this dates much farther back. It dates to the period when the paleozoic were affected by the granite, and crumpled or folded back by that rock.

I have gone through most of the points connected with the geology of stream tin, especially as it refers to the State of Pêrak. You will doubtless be inclined to ask a question which I have not touched upon at all. This is, how the occurrence of tin ore in such quantities in clays or in granite is accounted for. This must form the subject of another lecture, for the story is a long one. It cannot be accounted for in as satisfactory a manner as the occurrence of tin in drift, but the matter is of the highest interest, as you will find, connected with the most attractive field of geological research.

Let me say, in conclusion, that the connexion of stream tin with paleozoic rocks, limestone and granite is a most cheering part for the future mining prospect of this State. Such rocks are to be found everywhere: the valleys of the rivers are full of them. This makes me think that the tin deposits of the Malay Peninsula are the richest in the world, and that we are as yet only on the threshold of our discoveries.

## LECTURE II.

## 21st April, 1884.

Our enquiry in this lecture will be as to the way in which we can account for the rich deposits of tin ore in connexion with granite rocks.

You will remember how, in the first lecture, we began with the study of two pieces of stone, one of which was water-worn and the other a rough fragment of granite. The water-worn stone furnished us with a clue to the erosions of mountains and the formation of drift. We shall now turn to the rough stone to sift the question of its constituent parts, and we will begin our enquiry by asking—What is granite?

Broadly defined, it is a compound rock consisting of quartz, felspar and mica. Quartz is a very hard glassy mineral consisting of the oxide of the element silicon. Felspar is a trifle less hard and more complex. It consists of, say roughly, 60 or 70 per cent. of quartz, a large percentage of alumina, and the rest made up of soda or potash, and a very little iron, lime and magnesia. Mica is a shiny glistening mineral, generally coloured yellow, blackish or transparent. It splits into thin flakes, and looks golden or silvery in small specks. Mica is a compound mineral and contains, besides other minerals, notably lithia, silica, alumina and an alkali usually potash and magnesia, the silica being in smaller proportion than in felspar.

Now, observe that I am dealing with these things in the most general sort of way. There are not only many different kinds of granite but many different kinds of felspar. Granite also contains other different minerals besides those which I have mentioned, but exceptionally and in relatively small quantities. For my present purpose, however, my definitions as above are sufficient.

Observe other differences in this stone. It is not stratified. There are no lines nor marks such as it would have if it were a rock slowly deposited by water. It is a mass of crystals. Now, how did it get this form and how comes it that such a uniform appearance is presented by granites all over the world? It is no matter where you are— in Aberdeen, in Egypt, in Malacca, or Pêrak —granite is granite everywhere, and every one who has eyes can recognize it.

Various theories have been proposed to account for this. I cannot describe them all, but I will take the most natural and the most common idea. That is, that the stone has been melted by fire. The earth's surface, so it is said, is pretty uniform in materials, and

when it is melted and cooled, or slowly cooled if you will, becomes granite.

But against this theory we know many instances of the melting of the earth's surface by heat, and when cooled it becomes something very different from granite. Volcanoes emit from their craters the melted materials of the crust of the earth, but lava is not at all like granite, and even where it has cooled slowly it is still very different.

Heat alone, then, will not suffice as a theory. A simple reflexion will make us realize this better. Granite is in structure not unlike a piece of loaf sugar. But in the case of the sugar the structure is not due to mere heat, as I need not tell you. If you take the sugar and melt it over a fire, what a different material it becomes, and so it is with granite. If it be melted, which it requires an enormous heat to effect, the result, when cooled, is a mere slag.

Besides, if granite be closely examined, a curious feature in the crystals will be noticed. The mica and the felspar have both left the forms of their crystals imbedded on the quartz. But the quartz cools at a much higher temperature than the mica or felspar. If heat alone had been in operation, the quartz should have cooled first and left its crystals to modify the other two minerals.

But for all that, geological research proved beyond a doubt that, melted or softened in some sort of way, granite had formerly been. At its junction with stratified rocks it was frequently found to throw out veins into fissures, and to be injected, so to speak, as a molten material could only be expected to do. Granite dykes or elvans are not uncommon, and these sometimes in granite itself showing that the encasing material of which the walls of the dyke are formed had cooled or solidified to some extent before the latter was injected. When granite is found in contact with stratified rocks, the latter are usually much changed, and as if the crystalline rock had affected them by its heat. When this is not the case, it can generally be proved that there has been considerable displacement and upheaval since the granite was melted. The tilted stratified rocks which lie against it came to their present position in a later period in the geological history of both formations. Sometimes gradual transition from stratified rock to granite may be observed, so that it is difficult to say where one begins and the other ends, and even where the unaltered slates which lie near granite are submitted to microscopic examination. Occasionally in granite itself marks of former stratification can be made out. Blocks of evidently stratified rock are found imbedded

in granite paste. But the most extraordinary thing of all is that fossils have been found in granite, much changed, of course, and crystalline, but perfectly recognizable. The Jura *Belemnites* in the Alps may be cited as an example, and I think I have met with paleozoic fossils in a granitic rock in Australia.

All this was very puzzling and gave rise to many theories. The facts seemed to hold the balance equally between a stratified rock on the one hand, and a kind of volcanic, or at any rate, an eruptive rock on the other. Then the theory of metamorphism began to make its way. This suggested the granite had originally been a stratified rock, and that it had been converted into its present form by the agency of heat.

This, you observe, only removed the difficulty one step further back. The question was still unsolved as to what kind of heat it was. Gradually the microscope was brought to bear upon the matter, and this, with chemical aids, brought what is now believed to be a full and satisfactory explanation.

If you subject a small rough fragment of granite to microscopic examination, you will not learn much. But if you grind down thin polished slices until they become quite transparent, you will be able to subject them to very high magnifying powers. Then you will see that the apparently solid crystals are full of minute cavities. Some of these are partly filled with water, others with gas, others again are cavities containing perfect crystals of such minerals as common salt, and other salts of magnesia, soda, &c. These crystals sometimes appear in fluid, which may be water, and they are in constant movement.

It would be an error, however, to suppose that these appearances are only found in granite crystals. They are seen, though not exactly in the same manner, in volcanic rocks, in meteoric stones and even in the slags of furnaces. But microscopic examination has shown immense differences between granites and those which have been certainly subjected to heat within reach of the earth's atmosphere.

I cannot, in the limits of such a lecture as this, go into the details of this subject, but it will be sufficient to say that the progress of science, largely aided by the microscopic investigation of rocks, has shown us a most probable and sufficient cause for the metamorphism of granites. All the different effects of heat are found to vary according to the pressure at which they have been exercised.

It will save a great deal of explanation if I enter at once into the consideration of what must have been the geological his-

tory of the granites. First of all they are generally very old rocks. I say generally, because though most granites are paleozoic, there are mesozoic or secondary and cainozoic or tertiary granites as well. But the rock we have to deal with here is paleozoic, and I will consider that as affording the simplest case for consideration.

Now, we have evidence in this country that the granite here has been covered by two more formations at least. These were of considerable thickness. Fifteen hundred feet of limestone is exposed in places, and even then it has been greatly denuded or worn away. The paleozoic clays belong to a formation which is known everywhere on the earth's surface to be very thick. The history of the geological changes in the earth's crust justifies the inference that between these two formations and the comparatively recent date of their uncovering and denudation, many other formations must have succeeded and disappeared. So that, without any stretch of imagination, you can perceive that our granite was at one time covered by an enormous weight of overlying rocks. The pressure thus effected I do not attempt to estimate. It defies calculation. Millions of tons weight would result from a hundred feet or so of rock, so what of thousands of feet!

Now, pressure engenders heat. If we cannot estimate the weight, we may say, that at the most moderate computation, the heat engendered by pressure would have been sufficient to liquify the rocks. But the pressure would prevent liquifaction. The nature of the overlying rocks would also prevent much of the heat being lost by radiation.

Let us turn for a moment, before we consider the effects of this heat, to take into account the material with which it has to deal. Before these granites were covered over, they were stratified. We can see this in many places where the marks of stratification have not been obliterated. There was a time, then, when these strata were laid down line by line horizontally by the river or the sea or the aerial current from which they were deposited. They then consisted of sand, which means silica, of mud or clay, which means alumina, magnesia, lime, soda, potash and a little oxide of iron. Fluorine and carbons, tin, gold or silver were also present infinitesimally. How they came to be present, I shall explain hereafter.

But there was one very important ingredient which we must not leave out, and that was water. All rocks contain this in a certain proportion. I do not mean those stores which come out as springs upon the surface, but water mingled with the ingredients of the rocks, that is, chemically combined. Gases of course there were,

also chemically combined, and also water in its simple form, mixed or soaked in we may say, and from which no compound rock is ever free.

Now, consider the effect of heat caused by pressure on these materials aided by the presence of water. The latter material, you know, at the surface of the earth cannot be heated much above 212° degrees of Fahrenheit. Then it evaporates in the form of steam. But under great pressure, of course it cannot evaporate. It may be then heated to any extent that the pressure will bear. Water, even cold water, is a solvent of rocks to a far greater extent than you would imagine, not only by wearing them away, but by really dissolving the stone. But at very high temperatures water acts on rocks such as quartz more powerfully than the strongest acid does upon iron at the earth's surface. Let us take dull red heat, for instance, and I will tell you presently why I choose that degree of heat. At this temperature, quartz would be readily dissolved by superheated water, while I need not tell you that it requires a considerably higher temperature to melt it in the air.

These conclusions are not the result of mere theory. Experiments have proved them. By means of carefully secured vessels, water has been raised to a red heat and even higher, and its action upon quartz, glass and many other substances observed. If I do not mistake, after an experiment which lasted some 18 months, some of the minerals of granite and something very like granite have been reproduced by Mons. Daubrèe.

This pressure, or the weight of the superincumbent rock, is quite sufficient to account for the change of stratified rock into granite. Pressure has generated heat, heat has brought into action the highly corrosive and solvent action of water, chemical action has been set up, those elements that have the greatest affinity for each other have united, acids have neutralised alkalies, gases have been liberated and made new combinations, and finally minerals have segregated, and the result is the rocks in the form in which we see them now.

Be it remembered that though we class the rocks of this Range under one category, which we distinguish as granite, the rock is very varied in its constitution. It is fine grained, and coarse, blue and red, dark coloured and light. Some of it is almost all quartz and some foliated like a schist. Mica predominates in one place, and there are thick veins of felspar in another. All this is just what we should expect. The stratified rock was not of uniform character, but even if it were, the pressure would prevent the reduction of the whole into a rock of simple mineralogi-

cal features. This fact must also explain the presence of metals in one portion and not in another.

Some persons might find it difficult to understand how any interchange would go on under such pressure, but it will solve the difficulty to some extent when they are reminded that interchange and chemical action goes on in the hardest and most solid rocks. Solidity is a relative term. There is nothing on the earth so hard that a movement is not going on in its particles. The moving crystals in the cavities of granite prove this. Some think that light is the stimulus in this case. It may be so. That shows how even on the hard transparent diamond movement is continually going on, movement that is not more appreciable than the waves of light, yet movement and interchange for all that.

I mentioned red heat just now, and I did so because certain geologists believe that this is the temperature to which granite has been raised. This is not a guess. It is founded on the known qualities of gases and steam. Their rate of expansion under heat and pressure is calculated in connexion with the cavities in granite. Some of these, it will be remembered, are half full of water, which has been steam. The amount of condensation furnishes a factor from which the former heat is estimated.

Another kind of proof as to the origin of granite is found in the sections of extinct volcanoes. A few instances are found which enable us to see down into the innermost recesses of these subterranean fiery lagoons. In the lowest depths where pressure of the overlying lava prevented the escape of steam, the rock is granite. In fact, the volcano itself is probably no more than the escape through an accidental fissure of some of that heat which pressure is causing below.

We must not, however, leave out of consideration one important condition in these operations, and that is the length of time through which they have been exercised. We have no standard by which to measure it. The period of history occupies only a few thousand years. Supposing the granite to have been seething and baking amid steam at a red heat for that time, we can well imagine surprising results. But probably nature's laboratory has been working for cycles in which the historical period is only a unit. What are the mutations observed in these granite hills as a work for such eternal ages? The silence and obscurity in their history is one of those mysterious chasms to the edge of which science has enabled us to climb, but where we can discern only a depth which is unfathomable.

But now to account for the presence of the tin in the granite,

or rather in the strata from which the granite is formed. I am of opinion that it has been very finely, nay almost infinitesimally, divided through the rocks just as gold and silver is in the sea at the present day. Many people are not aware that these metals exist in solution in sea-water, but in so small a quantity, that tons of water must be evaporated before any appreciable quantity can be extracted. Now, it is quite certain that the precious metal is being deposited in the rocks forming on the sea-shore or at the sea-bottom at the present day. No doubt, immense quantities of this deposit would have to be reduced before even a trace of gold would be seen, yet the quantity is absolutely if not relatively great.

But what is not possible to man's chemistry is easily effected in the great laboratory of nature. If the present shore and sea deposits were subjected to such an action as that which reduced the ranges here to granite, we should have the gold in rich veins and shoots just as it is in the quartz veins in Australia. You may be inclined to say that the gold in Australia has been much more abundant than in the case I am supposing, but this is not so. It is estimated that more than five tons of quartz or vein-stuff has been operated upon for every ounce of gold extracted, which is considerably below the truth. This, however, be it less or more, is only a mere fraction of the rock metamorphosed from which this gold has been derived.

The whole process depends upon a peculiarity in the chemistry of minerals which is only imperfectly understood. This is a tendency to what we call segregation. Similar minerals seek each other out and run together. In the heavier metals when they are melted, one can understand it, but this occurs when the rocks or metals are not melted at all, where they are not particularly heavy, and where they take directions quite independent of the force of gravity. You will find veins of quartz and veins of felspar running through stratified rocks, you find lines of flints in chalk and septarian nodules in clay. If these things take place in solid rocks, every facility occurs for their occurrence in granite. Thus, in effect, we find in granite innumerable veins of quartz, felspar, iron ores, tin from seams of considerable thickness to the merest threads. They evidently do not depend upon cracks in the stone and could not have been injected in a fluid state. They have simply segregated and come together in that strange movement of particles to which the materials of the most solid rock are subject, by means of which they evidently travel long distance.

Now, turning to the tin ore, we find it in the form of an oxide. Pay attention to this. Tin is easily melted. If it had been sub-

jected to mere heat, it would have run together in the form of pure metal as it does in the smelting furnace. But under heat pressure and with water, it is forced to combine with oxygen gas, a combination which is not easily effected without those conditions. Tin when kept at a red heat with free access of air, oxidizes readily. There are two forms of oxide of tin, one in which one volume of tin combines with one volume of oxygen, this is called the protoxide or stannous oxide obtained by chemical precipitation. It is a very unstable compound, and on slight application of red heat makes it burn like tinder and become stannic oxide. There is the second combination, or peroxide of tin, in which one volume of tin is combined with two of oxygen. This is the common ore of tin.

If heat alone had been concerned in the production of the tin which is found, it would have occurred in a different way. The peculiar oxide of tin, which is so familiar to you here, is a state of the mineral which can hardly be adequately explained, unless formed slowly. Crystals of Cassiterite may have been formed by the sole action of water just as crystals of silica are so formed. But the proximity of the granite renders the conclusion more probable that the agencies of heat, pressure and superheated steam have been all in operation in the production of this oxide of tin.

Usually, the form of the fragments of Cassiterite in the drifts is not crystalline. You do find many crystals, but the majority of the grains are angular and amorphous. The edges are very clean and sharp, and not often manifesting any marks of abrasion. They resemble in this respect the fragments of quartz washed out of granite which are associated with them in the drift. From this I conclude that the tin has been amalgamated in the matrix or other rock paste just as quartz, felspar and mica are.

I am rather diffident in propounding a theory as to how this may have occurred. Supposing, however, tin to have been finely disseminated through the formation which went to form the granite, it may have been sublimed and then condensed on the edges of the strata where the metamorphism was not complete. Thus it is found at the junction of the granite with the stratified rock. The use of the terms subliming and condensation may be a little misleading. I only use them as generally expressing the category to which the processes may have belonged. As a matter of course, they must have been different, because the conditions were different from anything which we can reduce to experiment.

I am aware how unsatisfactory any theory is which cannot be brought to some test for its verification. In this matter, however, we must rest content with explanations which are little more than

plausible guesses. In tracing back things like the metalliferous deposits to their true causes, we are still working very much in the dark. My object in this lecture has been to point out what is really known about metamorphism and to show how it bears upon the occurrence of such ores as Cassiterite. I hope I have at least succeeded so far as to give you a clear and simple exposition of the subject, and with this, I must rest satisfied and conclude my lecture.*

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*NOTE.—Tin is found in drifts or alluvial deposits in Perak. Many think that it must have been derived from veins and that these will yet be found. The context of these lectures will show that I do not think so. The true matrix of the tin is in granite at its junction with the clays where it has been abundantly disseminated in fine and coarse grains. Nevertheless, in northern Perak there are tin veins or true lodes. Furthermore, I wish to place on record my opinion that the stream tin deposits of Perak are practically inexhaustible.

# RĔMBAU.

As little has been recorded on the subject of this State, except in works not very accessible, and as I have visited it officially on several occasions, I have thought that a short account of the country may not be without some interest for the readers of this Journal.

This State is one of the countries known as the "*Nĕgri Sĕmbilan*," or Nine States, formerly under a Yam Tûan (in full, Yang-di-pĕrtûan) Bĕsar and a Yam Tûan Mûda, each, however, with its own chief or Dato' Pĕnghûlu. One of Nĕgri Sĕmbilan.

In Rĕmbau, as in Nâning and others of the "Nine States," a considerable portion of the population are Mĕnangkâbau by descent, and Mĕnangkâbau people still come over, as they do to Malacca. Mĕnangkâbau origin.

Its name is said to derive from an enormous *Mĕrbau* tree which used to grow in the plain near the foot of Gûnong Dato'; there are said to be some traces left of it still. Supposed derivation of name.

Another account states that the great tree fell down from the mountain, and that the name of the country arose from the description of the noise of the fall as the colossal stem thundered down the steeps—"*mĕrbau rĕmbau.*"(1)

It is further related that so vast was the size of this giant of the jungle that its head reached to the Sungei Ûjong(2) stream, to which it gave its name (*i.e.*, Sungei Ûjong Kâyu Mĕrbau); while its branches extended to the Moar, and it has been pretended that from

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(1) Probably a case of metathesis. This is likely enough to be the origin of the name; the other accounts are, of course, later embellishments.

(2) This is the recognised official spelling, or I should spell it "Hûjong" in accordance with the proper Malay spelling, though Malays have begun to drop the "h" in this word, as in other similar ones, but I see no reason to drop it because it is mute. Many Malays still sound the "h" in "hîtam" and "hâyam," though the latter is more commonly sounded now without it.

this circumstance "Mĕrbau Sarâtus,"(1) one of the limits of fishing rights on the Moar, took its name.

Original settlement of.

Rĕmbau, like the rest of these countries, was, according to Mĕntra traditions, at first inhabited by the aboriginal tribes alone, and its first Pĕnghûlu was, like that of Nâning, appointed by the Dato' Kĕlâna Pĕtrâ of Sungei Ûjong. (2)

Another local version is that Rĕmbau was first settled by Bâtin Bĕndahâra Sakûdei at Hûlu Rĕmbau near Gûnong Dato', and he it was who felled the mighty Mĕrbau tree. According to native authority quoted by Newbold, Bĕndahâra Sakûdei was the first chief of Sungei Ûjong upon whom the title Kĕlâna Pĕtrâ was conferred, and was the son of a Bâtin,(3) and the following account of this origin was related to Newbold by the Râja di Râja of Sungei Ûjong:—

"In ancient times one of the princesses(4) of Sungei Ûjong hav-
" ing had the presumption to laugh at the naked state of a Bâtin
" of the Jakuns, incurred his resentment, and was compelled irre-
" sistibly to follow him through thicket and brake, until, moved
" with compassion, her 'sans-culotte maître de danse' broke the
" spell and married her. The offspring of this sylvan union is said
" to be Sakûdei, (5) from whom descend the Pĕnghûlus of Sungei
" Ûjong."

Pĕnghûlu how elected.

"Bĕduanda" is the name of one of the chief aboriginal tribes in the South of the Peninsula, and two of the chief Rĕmbau tribes bear the same name—the Bĕduanda Jâwa, and the Bĕduanda Jakun—from which the Pĕnghûlu is alternately elected.

Alternate election.

This alternate election is said to be due to a dispute in days

(1) The real origin of this name was probably that it was a very large tree, said to have 100 branches: *cf.* "rĕngas tûjoh" further down the Moar, which has seven stems branching from one root.

(2) *cf. infra* with approval of Johor.

(3) *cf. infra.*

(4) The tradition, if the word "princess" is to be taken literally, is somewhat mixed (a not uncommon occurrence) about this, for there was no princely race in Sungei Ûjong at the time; but it is a common practice to confer this title on women remarkable for beauty and fairness of complexion, and it may mean no more.

(5) *cf.* with Rĕmbau tradition *infra*, which makes him come from Johor.

gone by between the two branches of the Bĕduanda, each claiming the right to elect the Pĕnghûlu, which was settled by the sovereign of Johor giving each the right alternately.

He at the same time gave distinctive titles to the Pĕnghûlus—to the one elected from the "Bĕduanda Jâwa" that of "Sĕdîa Râja," to him of the "Bĕduanda Jakun" that of "Lêla Maharâja." Titles.

The office is hereditary, descending on the side of the sister, as in Nâning and in all the Mĕnangkâbau States. I attach a table shewing the constitution of the country, and giving an approximate estimate of the numbers of each tribe.

It will be noticed that the population is mixed. Mixed nationality.

The Siamese probably date from the time of the invasions by their ancestors recorded in the "Sĕjârah," and which, if we may believe that work, took place shortly before the Portuguese took Malacca.

Acheh and Malacca were at one time intimately connected, the latter, at first the superior, having subsequently become feudatory to the former.

The boundaries of Rĕmbau with Malacca territory were defined by the Treaty of the 9th January, 1883, and were fixed as follows :— Kwâla Sungei Jĕrneh,(1) Bukit Bĕrtam,(2) Bukit Jĕlôtong,(3) Bukit Pûtus,(4) Jîrat Gunjei,(5) Lûbok Tâlan,(6) Dûsun Fĕringgi(7) Dûsun Kĕpar,(8) Ûlu Sungga, Bukit Pûtus. Boundaries.

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(1) "Jĕrneh," clear.

(2) "Bĕrtam" a palm-like reed, of which the leaves are used for thatch, and the stem split for walling houses.

(3) "Jĕlôtong," a fine gĕtah-bearing tree. The gĕtah is mixed with other marketable gĕtah.

(4) "Bukit Pûtus," cleft hill, a very common name all over the country.

(5) "Jîrat," a grave; "gunjei," a giant. This giant is said to have been so tall that he could pluck the cocoa-nuts as he walked along; he is said to have been killed at Padang Châchar (the plain of the châchar trees) by introducing a spear head into a bambu in which water was given him to drink so that when he tipped it up to drink he swallowed the spear-head, on which he fled, and was brought down by being cut in the leg; he fell and was buried where he fell, the heap over this marks the boundary point, where a pillar is now erected. There is another Jîrat Gunjei in Tampin, said to be that of a female Gunjei.

(6) "Lûbok," pool in a river; "tâlan," a tree (in other parts of the country called "gâpis").

(7) "Fĕringgi" Portuguese; "dûsun" orchard.

(8) "Kĕpar," a very peculiar stumpy kind of palm.

The Rĕmbau branch of the Linggi from Sempang upwards forms the rest of the boundary line.

The boundary with Sungei Ûjong was fixed about two years ago by His Excellency Sir F. A. Weld, as, previous to that time, there had been disputes about it. It now runs as follows:—from Sempang to Bukit Mandi Angin, thence to Pĕrhentian Tinggi, and thence to Gûnong Angsi. The boundary on the inland side towards Sri Mĕnanti, Inas or Jĕlei, and Johol has shifted from time to time, Gûnong Pâsir, which is now under Sri Mĕnanti, is claimed as properly belonging to Rĕmbau, though in Newbold's time it was said to have originally belonged to Johol, and this last is confirmed by the aborigines, who are the best authorities. The boundaries with Sri Mĕnanti are said to be Gûnong Tûjoh, and Gûnong Lîpat Kâjang.

Those with Johol, Bâtu Gâjah (on hill of that name), Gûnong Dato', Pĕrhentian Lantei (or Tinggi) on Bukit Ûlu Âpi-Âpi, and (including Tampin) Bâtu Bĕrâpit (now claimed to be in Tampin, Pĕrhentian Manggis being said to be the right point, on Bukit Kûda Mâti), Jĕram Kambing and Bukit Pûtus.

Chief places. Sempang, where the Rĕmbau and Pĕnar join to form the Linggi, and where we have now a Police Station on a small piece of land ceded to Government in 1874, was formerly one of the chief places in Rĕmbau; Kwâla Pĕdas, a few miles further up on the right bank, was another, but they have both been abandoned. At Bandar Râsau was the residence of the Yam Tûan Mûda, and latterly of the late Pĕnghûlu Haji Saïl. In Newbold's time the Pĕnghûlu lived at Chĕmbong. The present Pĕnghûlu resides at Gĕmâyun near Chĕngkau, where Haji Saïl had another residence. Rĕmbau, in

Population. proportion to its size, is, no doubt, the most populous of these native States, being probably about 11,000, exclusive of Tampin, Kru and Tĕbong; the details will be found in the table shewing the constitution of the country; in Newbold (1839) it is given at 9,000 including Tampin and Kru. The most populous part of the country is said to be inland at Sri Lĕmak and Ûlu Sĕpri, but this is not

Character. confirmed by the numbers I have obtained. From the table first alluded to, it will be seen of what a mixed character the population

is. They likewise bear, among the Malays, the character of being pre-eminently treacherous. The Gâdong district (lying between our frontier and Gûnong Dato') near which Haji Mastafa lives, is said to be the harbour of robbers and cattle-lifters, but Haji Mastafa is too far advanced in years, too imbecile, and too much in the hands of others to do anything to improve matters; but under the new régime we may in time look for amendment.

Rĕmbau place of installation of Râja.

As Rĕmbau used to be the place of installation of the Yam Tûan or Yang-di-pĕrtûan Bĕsar, it will not be out of place to deal here with the subject of the Yam Tûans. The original States in the interior of this part of the Peninsula, according to tradition, before they became "Nĕgri Sĕmbilan" were Kĕlang, Jĕlĕbu, Sungei Ûjong and Johol, with seniority in the order given.

Original Nĕgri Sĕmbilan.

The "Nĕgri Sĕmbilan" are stated by NEWBOLD, and probably correctly, as being originally as follows, Kĕlang, Jĕlĕbu, Sungei Ûjong, Johol, Sĕgâmat, Nâning, Rĕmbau, Hûlu Pahang (including Sĕrting and Jĕmpol) and Jĕlei (in Pahang, adjoining Jĕlĕbu).(1) Kĕlang soon fell under the domination of Sĕlângor.

Johol originally included Jĕmpol and the whole watershed of the Moar as far as the Pâlong on one side and Mount Ophir on the other, having on the N. & W. common boundaries with Jĕlĕbu, Sungei Ûjong, Rĕmbau and Nâning (the latter now included in Malacca).

Sĕgâmat seems to have been absorbed by Johor a generation or two since. Nâning and Rĕmbau were children of Sungei Ûjong, and when the former of them came more directly under Dutch influence, Sri Mĕnanti, or more correctly Hûlu Moar, which had asserted independence of Johol, took its place in the confederation.

Origin of Yam Tuan Bĕsar.

About the middle of last century, the Dutch, in conjunction with the sovereign of Johor, Sultan ABDUL JALIL SHAH, who was suzerain

(1) There is of course another Jĕlei also known as Inas, which, till a generation or two ago, formed part of Johol, nor is it clear that it is entirely separate now; this district could not have been one of the original "Nĕgri Sĕmbilan;" the title of its chief is the same as that of the Johol Dato', while that of the Jĕlei in the text was Maharâja Pĕrba. No doubt with the decadence of the Johor dynasty, and the practical independence of Pahang, Jĕlei ceased to be regarded as anything but a dependency of the Bĕndahâra.

of the Nine States, appointed Daïng Kambôja, a Bugis Prince, as their chief.

His rule, however, was not approved of, and the Pĕnghûlus of Sungei Ûjong, Johol, Rĕmbau and Hûlu Moar invited, with the assistance of the Dutch and the consent of Johor, the Princes of the Mĕnangkâbau dynasty to come over as their chiefs. Daïng Kambôja, however, found support with some of the Pĕnghûlus, and for a time hostilities ensued between the rival parties, but in the end Râja Mĕlâwar, the Mĕnangkâbau Prince, prevailed, and Daïng Kambôja withdrew to Rîau, where he died in 1773. Thenceforward Johor, by common consent, had nothing more to do with the Nĕgri Sĕmbilan.

Râja Mĕlâwar was then duly installed as Yang-di-pĕrtûan Bĕsar by the four Pĕnghûlus of Sungei Ûjong, Johol, Rĕmbau and Hûlu Moar (who were styled the Pĕnghûlu Bĕlantik from their office of installing the suzerainty in Rĕmbau, which was thenceforth called "Tânah Kĕrjaan," *i.e.*, the place where the *business* of installation is performed, not "karâja-an," so it is said.(1)

Thence the suzerain proceeded to Sri Mĕnanti, his place of residence, so named from the chief and Bâtins there waiting to receive him in state, and it was called "Tânah Mĕngandong."(2)

The *bâleis* erected for the suzerain on his visits to the different States were constructed of peculiar form, which must not be altered. That in Sungei Ûjong was called "Bâlei Mĕlintang" according to the best account, figuratively speaking from its Pĕnghûlu being in a position to oppose any innovations attempted by the Yam Tûan;(3) that in Johol "Bâlei Bĕrtingkat" in the same way, being as it were, a third story on Sungei Ûjong and Rĕmbau, and being next door to Sri Mĕnanti, would bring their representations right up to the Astana.

(1) I am disposed to think it *was* "karâja-an" originally.

(2) "Kandong," to be with child, in that sense to carry, to support, so this place bore or supported the Yam Tûan Bĕsar.

(3) Not, I am informed, as NEWBOLD states, because it was built at right angles to the river. The allegorical explanation given in the text is more in accordance with Malay ideas.

The real power in these States is vested with the Pĕnghûlu, that of the suzerain being nominal only. NEWBOLD, from whose writings I have taken much of the account here given, states that, on the elevation of Râja Mĕlâwar to the office of Yang-di-pĕrtûan, the following arrangement was agreed to between him and the Pĕnghûlus: that he should assemble them on affairs of State and submit to a majority; that his maintenance be furnished equally by the inhabitants of the four States, each house contributing annually a gantang of padi, two cocoa-nuts and one *suku* (*i.e.*, 13½ cts.). Real power with Pĕnghûlu. Maintenance of Yam Tuan Bĕsar.

On the occasion of a death, marriage, or circumcision in the Royal Family, each Pĕnghûlu was to send three buffaloes and to furnish a certain sum for distribution (probably for the benefit of the various officers who took part in the ceremonies).

In the case of a war also, the Pĕnghûlu was expected to come forward with a certain contribution of men, arms, ammunition, and provisions.

The Pĕnghûlu derived his revenue from his power of inflicting fines, and from contributions in kind made by the people of his State; he was said, too, to have the power, in other Malay countries reserved to the sovereign, of enforcing gratuitous labour, but I doubt if the power has been exercised, except to a very limited extent.(1) The respective positions of Yang-di-pĕrtûan and Pĕnghûlu are also defined by the following verbal Mĕnangkâbau traditions:— Pĕnghûlu's revenue.

*Undang-undang of the Nĕgri Sĕmbilan.* (2) Undang-undang.

*Álam nen bĕrâja, lúhak nen berpĕnghúlu, súku bĕrtúha, anak búah berîbu bápa.*

The kingdom is under the Râja, the district under the Pĕnghûlu, the *suku* under the elder, and the members of the *súku*

(1) Such as helping in padi-planting and repairing the Pĕnghûlu's house and fence.

(2) *i.e*, of the "Pĕrpâtih (or perhaps more properly "Pâti" Pîhang) Sabâtang, opposed to which is the "âdat tĕmĕnggongan." I may refer to this in greater detail on a future occasion.

under the *ĭbu bāpa*, (lit., father and mother) title of subordinate elder.

*Sabingkah tānah tĕrbālik, sa hĕlei ŭrat kāyu yang pŭtus undang yang punya.*

Every clod of earth upturned, every slip of root snapped, is the Pĕnghûlu's.

*Deri hŭlu āyĕr mĕnyencheng sampei kahĭlir ombak mĕmĕchah, To' Bandar yang punya.*

From the trickling source of the stream to the mouth when the waves break is the To' Bandar's.

*Di pĭjak tānah, di langkah akar undang yang punya.*

All the soil and roots under foot belong to the Pĕnghûlu.

*Di sauk āyĕr, di pātah ranting sa champak gālah di tĕpi tĕbing To' Bandar yang punya.*

All water taken, or boughs broken within reach of a punting-pole from the banks, belong to the To' Bandar.

*Adat itu di anjak*(1) *lāyu, di ālih māti.*

Neglect of these customs will bring decay on the country, and if they are changed, destruction will result.

*Adapun Rāja itu tiāda mĕmpūnyai nĕgri dan tiāda bŭleh menchŭkei kharajat, mĕlainkan bĕrkaādilan sahaja sĕrta pĕrmākananya duti sasŭku, bĕras dŭa gantang, nior satāli.*

Now the Rāja does not own the country, nor can he levy taxes on its produce, but with him lies the final award of justice only, and he obtains a maintenance of a "sûku" (12 cents), two gantangs (gallons) of rice and a string of (*i.e.*, 2) cocoanuts. [A contribution from every householder.]

*Karna sĕsar ikan kabĕlat sĕsar bĕlat katèbing.*

For the fish (being pressed) rest against the weir and the weir is attached to the bank, (*i.e.*, the Lĕmbâga look to the Pĕnghûlu, and the Pĕnghûlu to the Rāja).

*Jika runtoh tĕbing, bināsa lah bĕlat.*

If the bank gives way the weir is destroyed (*i.e.*, if the Rāja is without justice, the Pĕnghûlu is *undang-less*, and the four

(1) *v. l.* "di châbut."

*sûkus* are without their *Lĕmbâga*, the *waris* get no inheritance, and the country is destroyed).

The following table gives a view of the Yang-di-pĕrtûans Bĕsar and Mûda from the time of their first introduction to 1832, from which it will be seen that up to the time of Râja Ali's appearance on the scene, the Yang-di-pĕrtûans came over regularly from Mĕnangkâbau. He was called in by the Rĕmbau people to help in the conduct of hostilities against Yam Tûan Mûda Râja Asil, and his son Râja Haji, who had given offence by a marriage that was considered unlawful. Table of Yam Tûans.

| *(From Mĕnangkâbau.)* | *Yam Tûan Bĕsar.* | *Yam Tûan Mûda.* |
|---|---|---|
| | Râja MĔLÂWAR. | —— |
| (Do.) | ——ÂDIL [(died 1795-96) leaving Râjas ÂSIL and SÂBUN, latter became Yam Tûan of Jĕlĕbu, and TĔNGKU PÛTIH.] | —— |
| (Do.) | ——HÎTAM (died 1808.) | Râja ÂSIL (son of Yam Tûan Bĕsar, Râja ÂDIL.) |
| (Do.) | ——LENGGANG LAUT (died 1824) had two sons RÂDIN and ÛJANG.(2) | Râja ALI (1815.)(1) |
| (Do.) | ——LÂBU (1826.) | —— |
| | ——ALI 1832. | Syed SABAN 1832. (3) |

(1) Son of Râja Hitam's wife by her former husband, Râja Haman, brother to Sultan Ibrahim of Sĕlângor.

(2) Tĕngku Antah, the present Yam Tûan of Sri Mĕnanti is son of Râja Râdin.

(3) Syed Hamid, the present ruler of Tampin, is his son.

Râja Ali.

Râja Ali intrigued himself into the position of Yam Tûan Mûda, and after the defeat and retirement from the country of Râja Lâbu, the last Mĕnangkâbau prince, he succeeded in obtaining the object of his ambition, the position of Yam Tûan Bĕsar, to which, as to that of Yam Tûan Mûda, he had no real claim at all.

From the time of his advent till quite lately, Rĕmbau and the neighbouring States have continued to be troubled by a series of intrigues.

Syed Saban.

He appointed Syed Saban, his son-in-law, Yam Tûan Mûda, who was ultimately unable to hold his own, and after the Nâning war became a pensioner of the Government, living alternately in Malacca and Tampin, which latter place has, from the time of the first Yam Tûan Mûda Râja Asil, been assigned to the prince holding that position for his maintenance.

Syed Hamid.

Syed Saban's son, Tengku Syed Hamid, though he has long endeavoured to obtain the position of Yam Tûan Mûda, has never succeeded in securing the needful recognition, and now rules in Tampin only, which may be now considered to be as completely severed from Rĕmbau, as that State is from any further connection with a Yam Tûan either Bĕsar or Mûda.

Origin of Pĕnghûlu Chiefs and "Sûku."

The following account embodies those traditions which have been handed down in Rĕmbau regarding the origin of the Pĕnghûlu, of some of the chiefs, and of some of the *sûkus*, and will be found, as might have been expected, to differ in some points from others on the same subject already referred to and obtained from different sources.

Lĕmbâga.

Among the "Lĕmbâga" or eight chiefs of "sûku" the two highest are the Gĕmpa Maharâja, and Mĕrah Bangsa.

This is because, on the decease of a Sĕdîa Râja Pĕnghûlu, when the chiefs are assembled for the election of his successor, the Dato' Gĕmpa Maharâja's duty is to install him and notify it to the people. And on the decease of a Lêla Maharâja Pĕnghûlu the Dato' Mĕrah Bangsa discharges similar functions.

The four Lĕmbâga in the low country are held senior to the four inland, and when one of the former dies, his insignia are half those displayed on the death of a Pĕnghûlu, while those of an inland

chief are slightly less; money, for instance, is not scattered on the way, nor are cloths spread on the path. The story of the origin of Dato' Gĕmpa, Dato' Pĕrba, and Dato' Pûtih is as follows: There was a chief named Dato'(1) Bĕndahâra Sakûdei(2) (his wife was a Jakun, daughter of Bâtin Sarîbu Jâya, she was called Princess Long-hair), who came from Johor with his followers to open Rĕmbau. After him came a man from Mĕnangkâbau named Dato' Lĕteh, and he and his party became trusted to the Dato' Bĕndahâra, and supported the people from Johor: they all settled at a place called Kĕbun Lâda (Pepper Garden). After a time Bĕndahâra Sakûdei had three children (female) the eldest named Dato' Bungkal, the next Dato' Mûdek, and the youngest Dato' Mĕngkûdu. Later on he removed to Sungei Ûjong, but he left his eldest child Dato' Bungkal in Rêmbau with Dato' Lĕteh. Dato' Lĕteh belonged to the Mandîling branch of the Bâtu Hampar Sûku, and at the time all those of the Bâtu Hampar Sûku who came over from Mĕnangkâbau to Rĕmbau put themselves under him.

Origin of Gĕmpa Maharâja Pĕrba, and Pûtih.

There were five branches of the Bâtu Hampar Sûku from Mĕnangkbau who adhered to Dato' Lĕteh, viz., the Mandîling, the Chĕniâga, the Pâya Bidâra, the Pagar Chinchang, and the Agam.

In course of time Dato' Lĕteh looked round for a suitable husband for the daughter of the Bĕndahâra, and while he was considering the matter, there came a Mĕnangkâbau man of the Chĕniâga branch of the Bâtu Hampar Sûku named Dato' Lêla Bâlang, to ask for Dato' Bungkal as a wife; all the family were agreed to it, and they were married.

In due course Dato' Lêla Bâlang became father of a son, whom he named Lêla Maharâja.

When he was about six years old, and the country had become populous, Dato' Lĕteh consulted with Dato' Lêla Bâlang, and suggested that it would be advisable for the latter to go to Johor and make over the country, for it belonged to the Dato' Bĕndahâra

(1) The account quoted *supra* calls him a Bâtin, which would imply that he was himself a Jakun. The title of Bĕndahâra is now in use amongst the Jakuns.

(2) Probably because he came from the river of that name in Johor.

(Sakûdei), the two Dato' thought that no one else could rule the country but Lêla Maharâja, for he was the grandson of the Dato' Bĕndahâra.

First appointment of Pĕnghûlu.

Then Dato' Lêla Bâlang went with Dato' Laut Dâlam who was a Mĕnangkâbau man with a Javanese wife, to Johor and there the son of Dato' Lêla Bâlang was appointed Pĕnghûlu Lêla Maharâja, but while he was in his minority Dato' Lêla Bâlang undertook the duties, and was given the title of Dato' Gĕmpa Maharâja.

Second appointment of Pĕnghûlu.

Then came Dato' Laut Dâlam complaining to Dato' Lĕla Bâlang that he had obtained the Pĕnghûluship for his son and the administration of it for himself with a title, while he, Dato' Laut Dâlam had got nothing for his trouble (the journey to Johor?). Then Dato' Lêla Bâlang returned to the presence the same day and represented the state of matters. The Râja asked whether Dato' Laut Dâlam had any daughters, and finding he had, decided that when he grew up Lêla Maharâja should marry Dato' Laut Dâlam's daughter, and if he got a child, that child should be Pĕnghûlu Sĕdîa Râja, whose duties should be undertaken by Dato' Laut Dâlam, and Dato' Laut Dâlam had the title of Dato' Mĕrah Bangsa conferred on him. They then returned to Rĕmbau. (1)

It was subsequently decided, in consultation with Dato' Lĕteh, that all the Chĕniâga branch of the Bâtu Hampar Sûku should be handed over to the charge of the Dato' Gĕmpa Maharâja, *i.e.*, Dato' Lêla Bâlang. The other four branches of the sûku remained under Dato' Lĕteh, who was Dato' Pûtih, and have so continued to this day.

The descendants of Dato' Laut Dâlam became the "waris" of the Pĕnghûlu Sĕdîa Râja, because of the mother having been Javanese, and when the "waris" of both Pĕnghûlus had become numerous, an elder was put over them with the name of Dato' Pĕrba, who was chosen alternately from each side, being at one time Jakun and the next Jâwa.

Dato' Pûtih has always been considered to be connected with the

(1) This and the other States were no doubt at the time of the taking of Malacca by the Portuguese inhabited by aborigines only. These latter assisted in the defence of Malacca with their primitive weapons.

Dato' Pĕrba up to the present time, because Dato' Lĕteh brought up Dato' Bungkal, and Dato' Pûtih is descended from Dato' Lĕteh, and Dato' Pĕrba is descended from Dato' Bungkal.

The following account is given of the origin of the name "Lîma Sûku" in the low country :—

Origin of Lîma Sûku.

In the time of Pĕnghûlu Kâsir a woman of the Dato' Pĕrba's people was taken to wife by a man of the Mungkar tribe in Tampin, but his people did not pay the marriage dowry. On this the Dato' Pĕrba and Dato' Pûtih after consultation summoned their people together and went to Tampin to demand the dowry; they kept up the attack for about a fortnight, but without success; then Dato' Pûtih and Dato' Pĕrba called to their aid Dato' Maharâja Sĕnâra, Dato' Lêla Angsa, and Dato' Ganti Maharâja: these three agreed to help them in the affair they were engaged in, and assembled all their people and attacked Tampin, which was defeated at their first attempt; the Mungkar people admitted the dowry claim, and the matter was settled. Then the five Dato' returned to Rĕmbau, and there they agreed to act together always, and they had a feast and slaughtered buffaloes, and Pĕnghûlu Kâsir removed to a place called Mesjid Bâtu Pûtih, where there was a great assembly and the five chiefs mentioned registered an oath with the spilling(1) of blood and under the Korân, that they would remain five elders with one Lĕmbâga, each with his own people, but of one mind, whether advantage or injury should accrue, they should share it as long as the sun and moon, which cannot change, endure. Whichever of the five chiefs should change or depart from the above solemn agreement, he would be punished by the testimony of the thirty books of the Korân, the Majesty of Pagar Rûyong would fall upon him, and the weapon Kâwi would make an end of him. This was the origin of the five sûkus, and thenceforth Dato' Pĕnghûlu Kâsir spoke of the four and five sûkus, in the low country, with respect to the "bĕrampat berlîma sûku," and the "bĕrampat bĕrsĕmbilan sûku" inland. It is said that the first settling of this

First settlement "di-dârat," *i.e.*, inland.

(1) Each party puts some of his blood into a cup, and then each dips his finger into the blood and conveys it to his mouth.

part of the country was agreed on by three chiefs from Mĕnangkâbau; one Dato' Laut of Pâya Kumboh (1) selected a stream called Lâyang; from him Dato' Si Maharâja (2) is descended: another Dato' Pûtih from Sri Lĕmak took the stream called Lûbok Rûsa; from him is descended Dato' Sinda Maharâja: (2) another Dato' Inda Pĕtrâ, a man of Bâtu Bâlang took the stream of Bintongan; he was the ancestor of Dato' Andîka. (2)

These three all began planting in the places named. They claimed from the sources of the streams to their junction with the main stream. While engaged in clearing, they heard the sound of many trees falling down stream within the range of their claims, on going to see the cause, they found one Dato' Pûteh Kĕpâla a Sri Mĕlĕnggang man of Mĕnangkâbau occupied in clearing. (Dato' Mandĕlîka (2) descends from him.) The place was called Bâtu Hampar. Then there was a dispute between the three chiefs and Dato' Pûteh Kĕpâla, the former claiming from the gullies to the mouths of their streams, saying they had settled there first; the latter claimed the same, and their claims were equally strong, for they had been all recognised from Johor. Later on authority came from the Pĕnghûlu dividing the land between them, and making the boundary from Bâtu Mĕnunggul to Tunggâl Mĕrbau in the Bâtu Bĕsar jungle, and thence to Tunggâl Châchar, on to Kwâla Ânak Âyĕr Hîtam in the Sêpri stream; whoever went up the Leng stream must be under Dato' Si Maharâja, whoever went up the Lûbok Rûsa stream must be under Dato' Sinda Maharâja, and any one settling up the Bintongan stream must be under Dato' Andîka. So the Tĭga Bâtu people under Nang Bĕsar, who went up the Bintongan, were under the jurisdiction of Dato' Andîka. So likewise in the case of the Sĕprî, Dato' Pĕnghûlu Uban brought two men from Johor, Dato' Chindei Luâtan (a Bĕduanda, from whom descends Dato' Sĕtir Maharâja), and a Mĕnangkâbau man of the Pâya Bidâra branch of the Bâtu Hampar, (from whom Sûtan Bĕndahâra is descended), and told them to settle on the Sĕprî. They worked

(1) Name of a rush-like grass growing in swampy ground.
(2) Lĕmbaga "di-dârat."